

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

October 20, 2005

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, October 20, 2005, at 1:50 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Harold Warner Jr., Chair; Darrell Downing Vice-Chair; Bill Johnson (Out @ 4:45/In @ 5:30); Bob Aldrich; Don Anderson; Denise Sherman (Out @ 4:45); Bud Hentzen; Ronald Marnell; Hoyt Hillman and Morris K. Dunlap. John W. McKay Jr., M.S. Mitchell and Elizabeth Bishop were not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; David Barber, Advanced Plans Manager and Rose Simmering, Recording Secretary.

1. Approval of October 6, 2005 meeting minutes.

GOLTRY There is a typo on page 13; change Agenda Item to #5.

MOTION: To approve the October 6, 2005 meeting minutes subject to one correction noted by staff.

DUNLAP moved, **DOWNING** seconded the motion, and it carried (9-0-1). **WARNER** abstained.

❖ SUBDIVISION ITEMS

2. Consideration of Subdivision Committee recommendations from the meeting of October 13, 2005.

2-1. SUB 2005-83: Final Plat -- MARIE'S MEADOW NORTH ADDITION, located on the northeast corner of 183rd Street West and 23rd Street South.

NOTE: This site is located in the County within three miles of Wichita's boundary. It is located in an area designated as "rural" by the Wichita-Sedgwick County Comprehensive Plan. The site is located within the 100-year floodplain. It is located in the Goddard Area of Influence. The City of Goddard will be providing future water and sewer services.

STAFF COMMENTS:

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact County Code Enforcement to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval. Elevated lagoons have been recommended by City of Goddard.
- B. In conformance with the Urban Fringe Development Standards, for individual domestic wells that are proposed, a water availability evaluation must be provided to Sedgwick County Code Enforcement to assure the availability of an adequate, safe supply of water that does not impair existing water rights. Easements shall be dedicated for potential future extension of public water.
- C. The site is currently located within the Sedgwick County Rural Water District No. 4. If service is available, feasible and the property is eligible for service, County Code Enforcement recommends connection.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. County Engineering needs to comment on the status of the applicant's drainage plan. A detailed flood study is needed. FEMA approval may be needed. Drainage easements and reserves may need to be revised based on results of flood study. Terraces need to be removed. A drainage agreement is needed from the exception to this plat.
- F. The language regarding easements being vacated needs to be removed from surveyors certificate.
- G. The railroad right-of-way limits needs to be verified.
- H. Blocks 1 & 2 need to be combined.
- I. The preliminary plat denotes one joint opening along 183rd St. West and street openings on both Pawnee and 183rd St. West. The Subdivision Committee has approved access control except two openings for Lot 1, Block 1.
The final plat includes revised access controls as requested.
- J. In accordance with Access Management Regulations, complete access control is required for arterials intersecting with local streets. Complete access control of 75 feet is needed along the internal street from both Pawnee and 183rd St. West.
The final plat includes revised access controls as requested.

- K. **County Engineering** has requested a street stub extending to the east in order to provide for connection with potential subdivision of the adjacent property.
- The final plat has included a contingent street dedication extending to the east. The contingent street right-of-way width needs to be denoted with a dashed line and increased to 70 feet to conform with the suburban residential street standard.**
- L. **Sedgwick County Fire Department** advises that all access drives shall be in accordance with Sedgwick County Service Drive Code.
- M. The applicant shall guarantee the installation of the proposed streets to the 24-ft suburban street standard.
- N. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed.
- O. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations for Lot 8, Block 2. The Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width. **The modification has been approved.**
- P. **GIS** needs to comment on the plat's street names. **The street names are approved.**
- Q. In accordance with the Subdivision regulations for suburban subdivisions, the turnaround for the cul-de-sac needs to be increased to a 75-ft property line radius.
- R. The MAPC signature block needs to reference "Harold L. Warner, Jr., Chair".
- S. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- T. On the final plat tracing, the contingent dedication of right-of-way needs to be properly referenced in the plat's text. The language should state, "the contingent street dedication is hereby contingently dedicated as street right-of-way to become effective upon the platting of any adjacent subdivision having a street connecting thereto. The costs of constructing said street, are to be borne by the person(s) or agency that owns said adjacent subdivision."
- U. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- V. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- W. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- X. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Y. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Z. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- AA. Perimeter closure computations shall be submitted with the final plat tracing.
- BB. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- CC. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- DD. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendations.

DUNLAP moved, **DOWNING** seconded the motion, and it carried (10-0).

- 2-2. **SUB 2005-108 (Associated with ZON2005-43): One-Step Final Plat – KDMM SECOND ADDITION**, located on the north side of 53rd Street North and east of Tyler Road.

NOTE: This site is located in the County within three miles of Wichita's boundary. in an area designated as "Small city 2030 urban growth area" by the Wichita-Sedgwick County Comprehensive Plan. A zone change request (ZON 2005-43) from RR, Rural Residential to NO, Neighborhood Office has been requested. It is located in the Maize Area of Influence. The City of Maize will be providing future water and sewer services.

STAFF COMMENTS:

- A. This plat will be subject to approval of the associated zone change and any related conditions of such a change. Prior to this plat being considered by MAPC, the zone change will need to be approved.
- B. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact **County Code Enforcement** to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. A memorandum shall be obtained specifying approval. **Sedgwick County Code Enforcement recommends plugging current water well.**
- C. In accordance with the Urban Fringe Development policy, since this plat is located within the Maize 2030 Urban Growth Area, the subdivider shall contact the City of Maize, to determine the financial feasibility of connecting the proposed subdivision to the city water system. If financially feasible, then the subdivision shall be connected to the city's water system in accordance with that city's standards.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. **County Engineering** needs to comment on the status of the applicant's drainage plan. **A drainage plan is needed.**
- F. The language regarding easements being vacated needs to be removed from surveyors certificate.
- G. **County Engineering** needs to comment on the access controls. The plat denotes two openings along 53rd St. North. **Sedgwick County Public Works recommends access control except for one opening.**
- H. **Sedgwick County Fire Department** advises that all access drives shall be in accordance with Sedgwick County Service Drive Code.
- I. The existing south property line should not be denoted with a bold line.
- J. The platlor's text shall note the dedication of the street to and for the use of the public.
- K. The MAPC signature block needs to reference "Harold L. Warner, Jr., Chair".
- L. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- M. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- R. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- U. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- V. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendations.

JOHNSON moved, **HILLMAN** seconded the motion, and it carried (10-0).

❖ **PUBLIC HEARINGS – VACATION ITEM**

3-1. VAC 2005-35: Request to Vacate a Portion of Platted Street Right-of-Way and a platted setback.

APPLICANTS/AGENT: 119th & Kellogg Associates, c/o Grant Tidemann
Baughman Company, PA, c/o Phil Meyer

LEGAL DESCRIPTION: Generally described as that portion of the Harry Drive ROW as dedicated on the Wheatridge Addition, that abuts the south sides of Lots 6 & 7, and a southwest portion of Lot 5, all in Block 2, all in the Wheatridge Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located north of US Highway-54/Kellogg Avenue, between 119th Street West and Hornecker Drive (Council District V)

REASON FOR REQUEST: Revert to private property

CURRENT ZONING: The site is public right-of-way. The abutting properties are zoned "GC" General Commercial. US Highway-54/Kellogg Avenue is south of the site

The applicant is requesting vacation of the eastern 320-foot long (x) 50-foot wide, portion of Harry Drive ROW. From the proposed vacated portion, there is another 759.3-feet of Harry Drive that continues west to Hornecker Street. Hornecker Street immediately intersects, south, with US-54/Kellogg Avenue. The proposed vacated eastern portion of Harry Drive dead ends 80-feet deep into Lot 5, Block 2, the Wheatridge Addition. This abrupt ending of Harry Drive in Lot 5 leaves it approximately 470.07-feet short of intersecting with 119th Street West; see the exhibit of the recorded Wheatridge Addition. There is a platted 35-foot setback that runs parallel to the proposed vacated ROW on Lots 5, 6, & 7, Block 2, Wheatridge Addition. There are no water, sewer or other utilities in the proposed vacated portion of ROW. The Wheatridge Addition was recorded with the Register of Deeds April 8, 1968.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the Harry Drive ROW and platted setback, as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 - 1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time September 29, 2005 which was at least 20 days prior to this public hearing.
 - 2. That no private rights will be injured or endangered by the vacation of the above-described portion of platted street ROW and platted setback and the public will suffer no loss or inconvenience thereby.
 - 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted Harry Drive ROW and platted setback described in the petition should be approved with conditions;
 - (1) Provide staff with a restrictive covenant tying and binding Lots 6 & 7, Block 2, all in the Wheatridge Addition, and to the abutting vacated portion of the platted Harry Drive ROW. Access to Lots 6 & 7, Block 2, will be from Lot 5, Block 2, all in the Wheatridge Addition. Provide staff with a restrictive covenant tying and binding Lot 5, Block 2, the Wheatridge Addition to the abutting vacated portion of the platted Harry Drive ROW
 - (2) Retain platted access control along the south sides of Lots 5, 6 & 7, Block 2, all in the Wheatridge Addition.

- (3) Vacate the platted 35-foot setback on the south sides of Lots 5, 6 & 7, Block 2, all in the Wheatridge Addition, where they abut the vacated portion of Harry Drive. Replace with another 35-foot setback that runs parallel to the new south lot lines of those lots, as created by the vacation of the Harry Drive ROW.
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants.
- (5) Dedicate additional utility easement to extend the platted easements that run parallel to the west side of Lot 7, and in between Lots 5 & 6, all in Block 2, all in the Wheatridge Addition.
- (6) All improvements shall be according to City Standards.
- (7) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County or franchised utilities and recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Provide staff with a restrictive covenant tying and binding Lots 6 & 7, Block 2, all in the Wheatridge Addition, and to the abutting vacated portion of the platted Harry Drive ROW. Access to Lots 6 & 7, Block 2, will be from Lot 5, Block 2, all in the Wheatridge Addition. Provide staff with a restrictive covenant tying and binding Lot 5, Block 2, the Wheatridge Addition to the abutting vacated portion of the platted Harry Drive ROW.
- (2) Retain platted access control along the south sides of Lots 5, 6 & 7, Block 2, all in the Wheatridge Addition.
- (3) Vacate the platted 35-foot setback on the south sides of Lots 5, 6 & 7, Block 2, all in the Wheatridge Addition, where it abuts the vacated portion of Harry Drive. Replace with another 35-foot setback that runs parallel to the new south lot lines of those lots, as created by the vacation of the Harry Drive ROW.
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants.
- (5) Dedicate additional utility easement to extend the platted easements that run parallel to the west side of Lot 7, and in between Lots 5 & 6, all in Block 2, all in the Wheatridge Addition.
- (6) All improvements shall be according to City Standards.
- (7) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County or franchised utilities and recorded with the Register of Deeds.

MOTION: To approve subject to staff recommendations.

DOWNING moved, **ANDERSON** seconded the motion, and it carried (9-0).
MARNELL stepped out of the room.

❖ **PUBLIC HEARINGS**

4. **Case No.: CUP2005-46 and ZON2005-42** – Charles and Barbara Johnson, Lynn and Jackie Johnson; Baughman Company P.A. c/o Terry Smythe (agent) Request The creation of DP-289 Johnson Commercial Centre Community Unit Plan; and Sedgwick County Zone change from "SF-20" Single-family Residential to "LC" Limited Commercial on property described as;

The East 856.8 feet of the Northeast Quarter of Section 24, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas EXCEPT the South 1991 feet thereof AND EXCEPT the North 45 feet thereof taken in Condemnation Case Number B-14456 for highway. Generally located Southwest corner of 53rd Street North and Meridian.

BACKGROUND: The applicant requests a zone change from "SF-20" Single-family Residential to "LC" Limited Commercial and creation of a commercial Community Unit Plan on a 10-acre site at the Southwest corner of 53rd Street North and Meridian. The site is used for agriculture.

The applicant proposes an approximately 10-acre commercial CUP with seven parcels. Parcels One through Six front 53rd Street North and Meridian, and range from .68 to 1.05 acres in size. Parcel Seven is an internal parcel, and is 5.58 acres in size. All parcels are proposed for 30% building coverage and 35% floor area ratio. Perimeter building setbacks are proposed at 35 feet, and building height restricted to that of the zoning code, but not to exceed 45 feet. Proposed uses include all uses permitted in the LC

Limited Commercial zoning district except for the prohibition of: adult entertainment, sexually oriented business, group homes, group residences, correctional placement residences, asphalt/concrete plants, private clubs, taverns, and drinking establishments. Signage is proposed to be monument signs spaced 150 feet. Flashing (except for signs showing only time, temp, and public service messages), rotating or moving signs are not permitted. Signage is proposed to not exceed 30 feet in height (which exceeds Wichita Sign Code). Extensive use of back lit canopies and neon or fluorescent tube lighting on buildings is not permitted. A landscape plan is to comply with the City of Wichita Landscape Ordinance.

All parcels are proposed to share consistent lighting elements, light poles are proposed to be limited to 24 feet in height, utilities are proposed to be underground, and landscaping is proposed to conform to the Landscape Ordinance. A six-foot masonry screening wall is required on the south and west property lines. All buildings in the CUP are proposed to share uniform architectural character, color, texture, the same predominant exterior building materials (which must be similar to materials in surrounding residential areas), and earth-tone colors with vivid colors limited to accent. The CUP is proposed to have vehicular internal cross-lot circulation, and pedestrian accessibility from sidewalks on 53rd North and Meridian. Screening requirements are consistent with zoning code requirements. Proposed access to 53rd Street North is with one full movement opening and two right-in/right-out only openings. Proposed access to Meridian is with one full movement opening and one right-in/right-out only opening. Proposed openings conform to the City of Wichita Access Management policy, except that the full movement drive onto 53rd Street North does not align with the full movement drive of a proposed CUP to the north. The proposed CUP states that no development shall occur until municipal water and sewer are provided to the site.

North of the application area, across 53rd North is an LC zoned bank site, and SF-20 zoned property used for agriculture. This northwest corner has requested an LC zone change and commercial CUP (DP-288 Meridian Valley CUP) for a 27-acre Wal-Mart anchored commercial development. Proximity of these two requests requires traffic infrastructure coordination. South of the application area is SF-20 zoned agricultural land, vacant properties, and a non-conforming automobile garage. Further south, on the west side of 53rd is SF-5 zoned property used for agriculture, and the Moorings residential development. The northeast and southeast corners of the 53rd and Meridian intersection are both zoned LC. A convenience store and mini-warehouse exist at the northeast corner; another convenience store and a manufacturing use exist at the southeast corner. East of the site, across Meridian, is an LC zoned, unplatted, large-lot single-family residence, and SF-5 zoned residences. West of the site is SF-20 zoned property used for agriculture. Approximately ½ mile west of the site are single-family residences, a non-conforming nightclub, and a vacant OW zoned property, rezoned in 2002 (ZON2002-53) with a protective overlay (PO 116).

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-20"	Single-Family	Bank site, agriculture, proposed CUP
	"LC"	Limited Commercial	
SOUTH:	"SF-20"	Single-family	Agriculture, single-family residential
	"SF-5"	Single-family	
EAST:	"LC"	Limited Commercial	Convenience store, manufacturing, single-family residential
WEST:	"SF-20"	Single-Family	Agriculture, nightclub, single-family
	"OW"	Office Warehouse	residential

PUBLIC SERVICES: Meridian and 53rd Street North are both four-lane arterials with a 60-foot half-width right-of-way (ROW), tapering to a 75-foot ROW at the intersection with a center left turn lane. An arterial sidewalk exists on the east side of Meridian. West of the site, on 53rd Street North, the bridge over the Arkansas River was widened to accommodate 4 lanes and a protected pedestrian lane.

The agent for the applicant did not submit a traffic study for this request, but indicated that he agreed with the City and County Traffic Engineers' recommendations for improvements. Based on ITE traffic demand ratios, the proposed uses on this application could generate over 10,000 cars per day. The Wal-Mart CUP application north of this site did submit a traffic study, and demonstrates a significant traffic demand.

Based on analysis of this site and considering the CUP application to the north, transportation improvements are requested for shifting an access point, accel/decel lanes, and center left turn lanes as follows. The CUP site plan should be revised to shift the full movement entrance on 53rd to the east, aligning it with the full movement entrance of the CUP on the north (the CUP to the north would be required to shift their entrance as well for this alignment). The applicant should guarantee a petition to extend the center left-turn lane on 53rd westward to the major (full movement) opening on 53rd Street North. This improvement would be shared with the CUP to the north. The applicant should guarantee a petition to extend the right-turn accel/decel lane on 53rd North to the westernmost minor (right-in right-out) opening on 53rd Street North, with a 100-foot taper west of the opening. The applicant should guarantee a petition to extend the center left-turn lane on Meridian to 100 feet south of the major opening on Meridian, to allow for 5 cars worth of stacking space. The applicant should guarantee a petition to extend the right-turn accel/decel lane south on Meridian to the major opening on meridian, with a 100-foot taper south of the opening.

All other normal public services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Functional Land Use Guide" of the *Wichita-Sedgwick County Comprehensive Plan* identifies the application area as within the 2030 Wichita Growth Area, appropriate for "urban development mix," and the corner identified as "local commercial." Urban development mix is defined as predominantly residential, with concentrations of institutional and commercial uses.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

The City of Wichita Access Management Policy requires that a 75-foot ROW at arterial intersections, tapering to a 60-foot ROW width. The policy also requires that right-in/right-out openings be spaced a minimum of 200 feet from other openings, and that full turning movement openings be 400 feet from arterial intersections.

The City of Wichita Sign Code requires that spacing between signs in the LC zone along arterials be 150 feet, height is limited to 25 feet (unless street frontage is not fully utilized), and area is limited to .80 square feet per linear feet of frontage.

RECOMMENDATION: The proposed zone change is in general conformance with the "Wichita Land Use Guide" recommendation of urban mix and local commercial use. The zone change and CUP are in conformance with the commercial locational guidelines of the plan. Requested sign height exceeds that of the Wichita Sign Code. Staff recommendations are designed to ensure consistency between this request and the CUP proposed north of this site.

The potential traffic generated by this request is significant, compounded by even more traffic from the CUP north of this site. Staff consulted with both the City and County Traffic Engineers to recommend traffic infrastructure improvements on this site.

Staff has had no contact from the public regarding this application.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to the following conditions:

- A. APPROVE the zone change (ZON2005-42) to "LC" Limited Commercial subject to platting the property in one year;
- B. APPROVE the Community Unit Plan DP-289 (CUP2005-46), subject to the following conditions:
 1. Shift the full movement entrance on 53rd Street North 50 feet to the east, aligning it with the full movement entrance of the CUP on the north.
 2. Guarantee a petition to extend the center left-turn lane on 53rd Street westward to the major (full movement) opening on 53rd Street North.
 3. Guarantee a petition to extend the right-turn accel/decel lane on 53rd North to the westernmost minor (right-in right-out) opening on 53rd Street North, with a 100-foot taper west of the opening. This guarantee should only include that portion west of DP-288 Parcel 3.
 4. Guarantee a petition to extent the center left-turn lane on Meridian to 100 feet south of the major opening on Meridian.
 5. Guarantee a petition to extend the right-turn accel/decel lane south on Meridian to the major opening on meridian, with a 100-foot taper south of the opening.
 6. Add to General Provision #16 "Metal as an exterior material shall be limited to incidental accent."
 7. Prohibit the following uses: safety service, pawn shop, agricultural sales and service, commercial wireless communication facility and theater.
 8. Revise General Provision #7.F. to limit sign height to 20 feet on Parcels 1 through 6, and limit sign square footage on Parcels 1 through 6 to 150 square feet.
 9. All property included within this C.U.P. and zone case shall be platted within one year after approval of this CUP by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
 10. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-289) includes special conditions for development on this property.
 11. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: LC zoning exists at the other three corners of the 53rd and Meridian intersection. Uses in the area are mixed commercial, residential and agricultural. This intersection is under development pressure, and will become a commercial corner as is typical of arterial intersections in the City.
2. The suitability of the subject property for the uses to which it has been restricted: The property to be rezoned could continue to be used for agriculture, or could be developed with single-family use as currently zoned. However, frontage at a major arterial intersection may not be attractive for single-family residential development. Planning policies
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Rezoning and commercial development could have a negative effect on future neighboring single-family residential uses west and south of the site. However, road improvements, proposed mitigating provisions, and the standards of the Zoning Code should mitigate that impact. The zoning and development pattern proposed is typical of land located at the intersection of two arterial streets in Wichita.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Functional Land Use Guide" of the *Wichita-Sedgwick County Comprehensive Plan* identifies the rezoning area as appropriate for "urban mix" and "local commercial" development. The proposed development is in accordance with the commercial locational guidelines of the plan. The request is not in conformance with the Sign Code, but can be modified to meet the requirements of this document.
5. Impact of the proposed development on community facilities: The proposed development will result in increased traffic on this portion of 53rd Street North and Meridian. Proposed drive alignment and turn lane extensions should mitigate turning conflicts at this location, with a larger commercial development on the north side of 53rd Street North. Drainage impacts will be evaluated at the time of platting.

ALDRICH I was at the DAB VI meeting last night and I did hear some of the concerns, not on this request but on the other request, and it will not have any bearing on my vote one way or the other.

TERRY SMYTHE, Baughman Company With the clarification of Condition B(1), we are going to agree with staff comments. Jess and I have talked about this the last couple of days. When we get into the platting stage if we move our driveway over to the east 50 feet, which is what Condition B(1) is indicating, we will be in conflict with an existing electrical pole, and if the Wal-Mart site moves over so that they are in line with us, they will be near or if not in conflict with a big Southwestern Bell fiber optics box. I believe we are in compliance with the Access Management Policy in terms of distances. I just want to make sure that neither us or the other applicant has to relocate those major utilities when we can cooperate during the platting of those properties. So if I can on Condition B(1), allow me to abide by the Access Management Policy and work with Wal-Mart on finding a site for that drive.

DUNLAP What about Condition #6? You are eliminating "Metal as an exterior material except for an incidental accent." You want to tell me what you mean by exterior material?

SMYTHE It says "Metal as an exterior material", so I think the intent is not to allow a metal building to occupy the site.

DUNLAP You are agreeing to not allow a metal building. Now you haven't defined what a metal building is. In my opinion, if you cover it with something it is not a metal building although that may be the structure, and so if it is covered it is ok?

SMYTHE That is my impression.

DUNLAP You are in agreement with Condition #8, with not complying to the City Sign Code, even though this is in the County, and limiting yourself to less than the City Sign Code, even though this is in the County, and ignoring the County Code?

SMYTHE My client has agreed to that comment. It is my impression on Condition #8 that we are really agreeing to what Wal-Mart is agreeing to on the north side.

MARNELL With Wal-Mart's reputation with cooperating so well with so many people what makes you think that they will shift their driveway to match yours in some way?

SMYTHE I believe staff will lean on them pretty hard to do that, and if you have ever looked at what it cost to relocate a fiber optic box I think economics will dictate that their drive will be pretty much in line with where we are today. Either location is still abiding by the Access Management Policy.

GREGORY CHINN, 2300 W 51st WICHITA KS 67204 I believe that most of the area residences are not against development. Speaking for myself, the concern over there will be the traffic. Your study said that there will be an estimated about 10,000 cars in the area. Can you tell me how many cars are currently clocked in the area?

MCNEELY We didn't have good counts this far north, but further south at the next mile line road to the south on Meridian the count was somewhere under 7,000 per day.

CHINN So technically are you saying that traffic will pick-up 50% or under 7,000 cars meaning about 9 times what it is now. What will the changes in traffic be? We have a concern for safety for area residents who go down 53rd Street, and you increase the traffic. Is there going to be a traffic light or are we going to have to endure several traffic accidents before something is done. Will this change the quality of groundwater up here? Many of us have well water and my water is tested to be fine and good as far as drinking, and the water is not contaminated and it leaves no stains on my concrete. Are adequate measures being taken to ensure the water quality will remain the same? Will the City give us an adjustment after Wal-Mart or this business pollutes the water?

WARNER I am not sure the Board can answer those questions. We might hear from the rebuttal from the applicant how they will affect water quality in any way, shape, or form. As far as the traffic count, maybe City Engineering can tell us or staff can respond to that again. As far as the traffic light goes, there is a City Department that takes care of those requests, if they determine there is a need for a light there will be one installed.

CHINN I am saying that it would be nice if they could predict how much more traffic there will be and how much is out there right now.

SMYTHE In terms of the groundwater, we don't envision using any wells. Our storm water will have to be taken down to the ditch further south and into the river. So we don't see any of our service water going into the groundwater table. I don't see any problem with people who are on existing wells although I do encourage people who are on dirt streets and have domestic wells to hook up to the City of Wichita water and sewer. In terms of safety, I can't predict what will happen on 51st Street. When the traffic counts warrant a need for a potential light it will happen. I know the developer to the south of us at this time is not looking to do anything. It is a large church that owns the property. South of there is the developer of the Moorings, and they still have some undeveloped ground. We will still have to see how those get developed and platted, and where the streets are to line up with 51st Street.

HETNZEN This case is in the County?

SMYTHE Correct.

HETNZEN Do you know any plans to annex?

SMYTHE Yes, when we get ready to develop this property, we will annex.

DUNLAP On Condition #8 did the applicant come up with this idea on limiting the height, and the number of signs, and the distances or was that staff's suggestion to the applicant?

MCNEELY Condition #8 would be the staff's suggestion to the applicant, they had already discussed limiting the spacing of signs, and they had suggested meeting Sign Code restrictions. But if certain properties developed prior to other properties they could essentially use up the square footage of signage allowed by the linear footage along the roadway prior to other properties wanting it.

DUNLAP So the County Sign Code is not adequate, and if we anticipate the annexation into the City, which will happen, then it is the opinion of staff that the City Sign Code is not adequate either?

MARNELL I would like to hear your comments on Condition B1.

MCNEELY We agree with the Agent that Condition B1 could be stated in a flexible way where both major drives align but that could be shifted as long as it meets Access Management Policy.

SCHLEGEL Is there some alternative language for Condition B1.

GOLTRY The Wal-Mart application, which was heard last night at the DAB VI is also looking at this same entrance location and did not raise concern. Wal-Mart will have some limitations on their site as well.

SCHLEGEL Here is some proposed rewording of Condition B1, "Shift the full movement entrance on 53rd Street North to the east sufficient to align it with a full movement entrance of the CUP on the north."

MCNEELY Yes, I think that will work fine.

TERRY SMYTHE I still think that they will have a potential conflict because of the fiber optic box. I know their CUP plan states that they will abide by the Access Management Policy, and we have agreed to the same and it is something between both of us that will need to be coordinated where the drives will be.

WARNER Can they comply without interfering with that box?

ALDRICH Where is the box located?

MCNEELY Points on map. I will show you a photograph of the box.

SMYTHE I am not sure what the affect will be on the vision triangle. We will work with them to get a good location.

MCNEELY Here is some amended language to Condition B1, "Ensure the full movement entrance on 53rd Street North aligns with the full movement entrance of the CUP on the North, and meets Access Management Guidelines."

SMYTHE Agrees to amended wording.

MOTION: To approve subject to staff recommendations with the change to Condition B1 wording to read "Ensure the full movement entrance on 53rd Street North aligns with the full movement entrance of the CUP on the North, and meets Access Management Guidelines."

HENTZEN moved, **DOWNING** seconded the motion, and it carried (9-1) **DUNLAP** opposed.

5. **Case No.: CON2005-44** – Edward E. & Barbara Laverentz/Selective Site Consultants (Robert Herlihy) Request Sedgwick County Conditional Use for 200-ft wireless communication tower on property zoned "RR" Rural Residential on property described as;

A 100' x 100' tract described as commencing at the Southwest Corner of the Southwest Quarter of Section 35, Township 27 South, Range 4 West, Sedgwick County, Kansas; said point bears S 03degrees 05'07" W of the Northwest Corner of said Southwest Quarter; thence N 66 degrees 25'19" E, a distance of 510.46' to the point of beginning. of said 100' x 100' tract; thence N 00 degrees 00'00" E, a distance of 100.00 feet; thence S 90 degrees 00'00" E, a distance of 100.00 feet; thence S 00 degrees 00'00" W, a distance of 100.00 feet; thence N 90 degrees 00'00" W, a distance of 100.00 feet to the point of beginning. Generally located on the northeast corner of 343rd Street West and 23rd Street South (2120 S. 343rd Street West).

BACKGROUND: The applicants are seeking approval of a Conditional Use permit to allow a "wireless communication facility" on .2295 acre of unplatted land (100 by 100 feet) located at the northeast corner of South 343rd Street West and West 23rd Street South. One of the applicants owns a total of 158 acres surrounding the application area. The proposed wireless facility would be a 200-foot tall monopole and be able to accommodate four carriers. The site is to be enclosed by a six-foot tall fence. The only traffic generated by the site is a monthly visit by a technician. The tower is needed to enhance Verizon's service along Highway 54 west of Wichita, and the cities of Garden Plain and Cheney. The application area is located one and half miles south of Highway 54 and approximately midway between the cities of Cheney and Garden Plain. The site plan indicates that the tower will be set back over 200 feet from the nearest property lines.

The application indicates that the closest existing communication tower is located 2.95 miles to the northwest of the proposed site at the southwest corner of 383rd Street West and Highway 54. That tower is located on property owned by the Sedgwick County Electric Cooperative, and is permitted by CON2003-18. A 300-foot high-guyed lattice tower has been approved at this location.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: RR Rural Residential; agriculture
SOUTH: RR Rural Residential; agriculture
EAST: RR Rural Residential; agriculture
WEST: RR Rural Residential; agriculture, farmstead

PUBLIC SERVICES: The site has access to 23rd Street, which is a sand and gravel road. No municipally supplied public services are available to the site, but then none are needed to support the proposed use.

CONFORMANCE TO PLANS/POLICIES: The site is located within the City of Cheney's "zoning area of influence." Cheney's Planning Commission will hear the case on October 3. The Land Use Guides for the Wichita-Sedgwick County and Cheney comprehensive plans do not specifically address the subject property other than to indicate that the subject property is located within Cheney's zoning area of influence. The Wireless Communication Master Plan is an element of the Wichita-Sedgwick County Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Master Plan indicates that new facilities should be permitted when other antenna support opportunities are not available. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year, and subject to the following Conditional Use restrictions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a maximum of 200 feet in height and shall not be lighted unless required by the FAA.
- D. The applicant shall obtain FAA approval regarding "objects affecting navigable airspace" and "impacts to terminal instrument procedures" for the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the MAPD, County Code Enforcement, and Director of Airports prior to the issuance of a building permit.
- E. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- F. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- G. The site shall be developed within one year of final approval by either the MAPC or the governing body.
- H. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is rural. The zoning surrounding the subject property in all directions are zoned RR Rural Residential and are used for agriculture or farmsteads.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR Rural Residential and is currently used for agriculture. The site could continue to be used for agricultural uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not detrimentally affect nearby properties as the monopole design minimizes the support structure's profile, and it is setback from property lines a distance to its height. The use generates very little traffic and lighting is restricted to only that required by the FAA, and strobe lights are expressly prohibited.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval would provide or enhance wireless communication services in an area that is apparently underserved which would be a benefit to subscribers in the area. Denial would delay enhanced service for the wireless provider as they would have to find another site, and the property owner would suffer an economic loss.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guides for the Wichita-Sedgwick County and Cheney comprehensive plans do not specifically address the subject property other than to indicate that the subject property is located within Cheney's zoning area of influence. The Wireless Communication Master Plan is an element of the Wichita-Sedgwick County Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The applicant has submitted propagation studies that indicate the application area is the best location to serve Cheney, Garden Plain and Highway 54, given Verizon's existing network configuration. Verizon is already located on two of the three towers located in the general area; the remaining tower is located too far west to effectively serve Garden Plain. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive.
6. Impact of the proposed development on community facilities: The use does not require municipally supplied services, generates very little traffic and will enhance Verizon wireless communication activities in an area that is underserved.

MOTION: To approve subject to staff recommendations.

JOHNSON moved, **HILLMAN** seconded the motion, and it carried (10-0).

6. **Case No.: ZON2005-44** – Medical Arts Partnership c/o Dr. Rev Cook (owner) J.P. Weigand c/o Steve Barrett (contract purchaser) Request Zone change from “GO” General Office, “TF-3” Two-family Residential and “MF-29” Multi-family Residential to “NR” Neighborhood Retail on property described as;

Lot 1, Bruce Meeker 2nd Addition, Wichita, Kansas, Sedgwick County, Kansas together with Lots 56, 58, 60, 62, on Lorraine Avenue and Lots 55, 57 and 59, except the East 20 feet for street, on Hillside and the North 15 feet of Lot 61 except the East 20 feet for street, on Hillside, all in Maple Grove Addition to Wichita, Kansas, Sedgwick County, Kansas. Generally located West of Hillside and east of Lorraine between 2nd Street North and 3rd Street North.

BACKGROUND: The applicant requests a zone change from “TF-3” Duplex Residential, “MF-29” Multi-family Residential, and “GO” General Office to “NR” Neighborhood Retail on the platted, undeveloped site. The site is located between Hillside Avenue & Lorraine Street, midway between 2nd and 3rd Streets. This is the last undeveloped site on Hillside, between Douglas Avenue and Central Avenue, and with the proposed zoning the site’s lots with Hillside frontage will extend west to Lorraine Avenue. The applicant proposes development of the property for neighborhood retail uses.

Development east of the site and across Hillside Avenue, include small medical and dental offices, zoned “GO”, and a vacant single-family residence zoned “MF-29”. South of the site is another medical office, zoned “GO” and a parking lot zoned “TF-3”. Properties west of the site, across Lorraine Street, include single-family residences, all zoned “TF-3”. North of the site, along its Hillside frontage, is a medical office, zoned “GO”. Also north of the site, where it extends to Lorraine Avenue, is an apartment building, zoned “B”. Hillside Avenue, between Douglas Avenue and Central Avenue, is mostly stripped out and developed with medical and dental offices, a vet office, both drive through and sit down restaurants, retail, a bank, personal services, an older fire station and a few small apartments. The Wesley Hospital complex is located a block and a half northeast of the subject site, at Hillside Avenue and Central Avenue, and is the largest employer in the area.

Any development on the subject property will be required to meet access management regulations, compatibility setback standards, landscaping and any other applicable codes and development standards.

CASE HISTORY: The subject properties are platted as a part of the Maple Grove Addition and the Bruce Meeker Addition. The Maple Grove Addition was recorded with the Register of Deeds July 10, 1886. The Bruce Meeker Addition was recorded with the Register of Deeds September 3, 1975. BZA40-67 allowed for off street parking on Lots 55 & 57, the Maple Grove Addition, with conditions including a contingent dedication of 20-feet of right-of-way along their Hillside frontage. The “TF-3” zoned parking lot abutting the south side of the site’s Lorraine frontage lots was also part of BZA40-67

ADJACENT ZONING AND LAND USE:

NORTH: “GO”, “B”	Medical offices, apartment building
SOUTH: “GO”, “TF-3”	Medical office, parking lot
WEST: “B”, “TF-3”	Single-family residences, apartment building
EAST: “GO”, “MF-29”	Medical office, vacant single-family residence

PUBLIC SERVICES: The site has access to Hillside Avenue and Lorraine Avenue. Hillside is a five-lane arterial along the site. Current traffic volumes, at the Hillside – Central Avenues intersection are approximately 22,000 and 20,000 vehicles per day. The 2030 Transportation Plan estimates that traffic volumes on Central and Hillside will increase to approximately 24,000 and 26,000 vehicles per day. Lorraine is a paved residential street that intersects with 2nd Street on its south end and dead ends at a drainage channel on its north end. 2nd Street is a one-way street going west at this location. The site also has access onto Lorraine from a partially paved platted alley. Water, sewer and all other utilities are available.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide of the Comprehensive Plan classified the subject tract as “urban residential” on its western portion and “local serving commercial” on its eastern portion. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request, with the implementation of the access management regulations, the restrictive covenant, the compatibility setback standards, landscaping, and the other provisions of the proposed protective overlay and any other applicable codes and development standards, mostly conforms to the Land Use Guide and the Commercial Locational Guidelines of the Comprehensive Plan.

RECOMMENDATION: Staff has concerned that the requested zoning of “NR” does not match the current zoning pattern within this block and that it would be an extension west of nonresidential zoning into the residential zoning and development along Lorraine Avenue. “GO” zoning is the predominate zoning along the Hillside Avenue Corridor, between the “PUD”, “LC” and “GC” zoning located around the Douglas – Hillside and Central – Hillside intersections. In this context the request appears to be spot zoning, with a site in the middle of extended “GO” zoning going for a less restrictive “NR” zoning. Comparing the uses allowed in “NR” zoning to the suggested types of uses sited in the Wichita Land Use Guide, the “NR” uses closely match the Guide’s suggested “commercial, office, and personal services that do not have a significant regional draw.” The uses allowed in “NR” zoning that are not allowed in the “GO” zoning district are restaurants, 2,000-sqaure feet or less in size, without drive through or curbside service and general retail. General retail uses do not include drive through or curbside service restaurants, convenience stores, vehicle repair limited or general, hotels/motels, service stations, car washes, night clubs, drinking establishments, taverns or pawn shops. Although the zoning request does not match the zoning pattern along this section of Hillside, its permitted uses are unobtrusive enough to match up with the Land Use Guide’s suggested uses. The “NR’s” maximum height restriction of 35-feet is the same as the abutting and adjacent “TF-3” zoning and less than what is permitted in the abutting “B” (55-feet) and “GO” (60-feet) zoning. The

extension of nonresidential zoning west from this east section of Hillside would be a first, with the exception of the zoning along the Hillside-Douglas and Hillside-Central intersections. A Protective Overlay with the proposed provisions would limit the negative impact of the nonresidential zoning on Lorraine's residential zoning and development. It would also similar to what was permitted with BZA-40-67, allowing parking on "TF-3" property along Lorraine, with conditions.

Based upon information available prior to the public hearings, Staff recommends APPROVAL of the "NR" zoning and the following provision of Protective Overlay # 164:

1. On site pole lights shall be no higher than 14-foot. They shall be hooded and directed onto the site and away from the residential developments and zoning west, north and south of the site. No pole lights shall be located within the required compatibility setbacks along the west, south and north sides of the property.
2. Solid screening with a landscape buffer will be provided along the west side of the site where it has frontage along Lorraine Avenue and where "TF-3" Duplex Residential zoning is west of the site and along its south and north sides where it abuts "TF-3" and "B" Multi-family Residential zoning. Solid screening will also be provided along the site's Hillside frontage's west side where it is adjacent to "B" zoning.
3. Permitted uses on lots fronting Lorraine Avenue (Lots 56, 58, 60 & 62, the Maple Grove Addition: these are the lots currently zoned "TF-3") are parking for the rest of the "NR" site and all residential uses permitted in the "NR" zoning district.
4. Dedication of complete access control onto Lorraine Avenue.
5. A restrictive covenant binding and tying the properties together.
6. Contingent dedication of 10-feet of right-of-way along the site's Hillside frontage.
7. Conformance to the current access management regulations.
8. Provide a guarantee for the paving of that portion of the alley that abuts the site

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The neighborhood located along this portion of the Hillside Avenue corridor is developed as retail, medical and dental offices, offices, banks, personal services, drive through and sit down restaurants and a few small apartments. The zoning ranges from "LC" and "GC" at the main arterial intersections, with almost solid "GO" zoning between these intersections and isolated spots of "MF-29" zoning. The more recent of these non-residential developments include a large commercial "PUD" a block and a half northeast of the site, at Hillside and Central, across the street from Wesley Hospital. Most of the residential development around the site, in the blocks east and west of Hillside, consists of older single-family residences (zoned "TF-3"), some older four-plexes and duplexes, and two more recently built small apartment buildings, zoned "TF-3", "MF-29" and "B".
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "GO" General Office and "MF-29" Multi-family Residential on its eastern portion and "TF-3" Duplex Residential on its western portion. The site is not developed and its "GO" and "MF-29" lots are probably too small to be developed. The "TF-3" zoned lots, along Lorraine Avenue could be developed as a duplex.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed "NR" zoning would allow similar types of development as the "GO" zoned portion of the site. The exceptions would be allowing general retail and a maximum sized 2,000-sqaure foot restaurant, with no drive through or curbside service. The "NR" zoning is more restrictive in the maximum height allowed for structures than either the "GO" or "MF-29" zoning districts. It is also more restrictive than the "GO" zoning in to not permitting group residences, general, all convalescent care facilities, correctional placement, general, and group homes, commercial. The implementation of the provisions of the Protective Overlay and the standards of the Unified Zoning Code over the whole site would limit the adverse impact on the adjacent residential developments.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "local serving commercial" and "urban residential" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. With the provisions of the proposed Protective Overlay, the site is largely in conformance to the Land Use Guide and Commercial Locational Guidelines of the Comprehensive Plan.
5. Impact of the proposed development on community facilities: Community facilities should be minimally impacted.

TERRY SMYTHE, Baughman Company The medical office complex to our south on Hillside is for sale as well. We think that with the condition of the site as well as the uses that are occurring within the apartment complex it has caused a lot of problems in the neighborhood. Everybody is asking us through this application to solve some problems, and we will try to as much as we can. We think by redeveloping this site clear back to Lorraine, when it gets done it will help that situation. Right now our only uses that we think will occur is on the east half from the alley to Hillside. There is a small little restaurant that has expressed some interest to being inside and some other small office uses, but those have not committed yet, but that is the interest that we have gotten on this site. We have had to buy the property across the alley, including this piece to the north of this paved parking lot. We agreed in the

staff comments that this was a good compromise that any uses west of the alley will be either parking for the lot along Hillside or residential uses.

There have been a couple other issues raised and the questions come up about screening and where the fencing should be. I am wondering if somehow on our north and south side those current uses are parking, and I sure would hate to screen our parking from their parking. I don't know how to do that in the Code, whether I have the option to do that or not or whether we can wait to do that screening along that side west of the alley until the uses are occurring. I think that would be beneficial to the homeowners that I have talked to, but I am trying to see if there is a need to screen a parking lot from a parking lot.

DAVID FRANKS, 3001 E. 2nd Street North, Wichita, KS 67214 Our neighborhood is an improving neighborhood and we are seeing the retail coming into the area. The concerns that we have are the west portion of the property, which is now a vacant lot. Any kind of screening particularly that goes to the property will be visually intrusive and less pleasant than what is there now. We would like to see for that reason that the requirement for fencing on that portion of the property west of the alley be put off as long possible. If they are not actually going to develop it there is no need for a fence. If they do eventually develop it we would like to see whatever is built on there if it is not residential be screened at the building setback line rather than at the property line because it will have approximately the same impact as a house would. The apartment complex that is there is a real problem to the neighborhood as far as crime, safety, and security are concerned, and until somebody puts a meth lab in there and burns it down, it will continue to be a problem. If the screening can be setback as far from Lorraine as possible it will benefit all the neighborhood and the police to keep a much better eye on that property.

GARY HASTINGS, 317 N. Lorraine, Wichita, KS 67214 I live next to the parking lot and have lived there for over 25 years, and we would like to see this zoning go forward, but with a certain stipulation if they build that fence that they have a 6 foot setback at least from the sidewalk back. They have some large trees and grass, and we would like to see some of that preserved. There is a lot of noise pollution in that area with the hospital, and the fire station, the asphalt will only make it bounce off and the vegetation will help control the noise. A masonry fence would be better than a wood fence because the kids kick down the wood fence. I would like to access Hillside from Lorraine. I have to take the alley way a lot.

Lori Lawrence is the Director of Communication of the Uptown Neighborhood Association, and she would like to include the condition that any fencing be placed at the west of any building and not on west the property line. She was unable to make it today but did send an e-mail.

JOHNSON I would like to ask staff how could they do the screening and leave it open like that?

LONGNECKER Per the zoning code, you are required to have screening when you are adjacent to residential zoning. There is residential zoning on the south side and the west side. You have multiple family zoning here. You could do an administrative adjustment about the screening on the multiple family side but you would have to ask for a variance on the screening on the south and the east sides where you have TF-3 duplex residential zoning. As far as where you place the fence, you are allowed to place a fence on your property line. If you want to set it behind the property line that is no problem either. If the applicant and the neighbor's agree on finding some type of solution to the required screening they would have to get a variance.

JOHNSON I heard a distance of 6-foot, I don't know what that does. Does it have to be 6 foot, 7 foot, 8 foot or what?

LONGNECKER Required screening is 6-8 foot. The alley is going to remain open, so the configuration that you see now is a L-turn backwards will be as it is, and we are asking the applicant to provide a guarantee for paving of that portion of the alley that abuts their property.

DUNLAP The actual use of the south boundary of the west portion of the property is not residential is it? It is zoned that way?

LONGNECKER It is zoned that way but it is not being used that way.

WARNER Is there a fence on the west side of the existing parking lot?

LONGNECKER No, there is not.

AUDIENCE There was until they tore it down.

SCHLEGEL Bill, Condition #2, is that in the Code?

LONGNECKER Yes.

SCHLEGEL So even if that was to be removed they still have comply with the Code?

LONGNECKER Yes.

GOLTRY There is a little latitude. When you have a commercial use on one side of the street and residential use on the other side and it is separated by the street, you can require that they comply with the landscape street yard requirements, and they don't necessarily always have to have a solid screening wall. I think in this case a solid screening wall from staff perspective was seen has beneficial in protecting the neighborhood from encroachment.

WARNER If we had a motion to require landscape rather than the fence?

SCHLEGEL Bill, these conditions are being offered up as a Protective Overlay?

LONGNECKER Yes.

SCHLEGEL So, in that light can we modify as Conditions of the Protective Overlay even though they might be different then the Code.

GOLTRY There is a limitation on that. If it is a supplementary use regulations, a protective overlay cannot make conditions less stringent than the base Code regulations are. They would have to go the variance route for that.

MARNELL On the west line of the east parcel, the portion of "B" zoning is just at the top, just a short portion?

SMYTHE That is the apartment complex.

MARNELL This says the lot on Hillside, the west line is to be screened from the "B" zoning, which would only be down to...

LONGNECKER Correct.

DUNLAP Since the neighbors would like to keep the green space and are not in favor of a fence, we don't find a Code method of doing away with the fence, would the applicant be interested in applying for a variance?

SMYTHE I will be glad to ask the applicant for the variance? Would I be applying for a variance on all the screening or just along Lorraine?

DUNLAP I didn't hear them say they wanted any screening.

SMYTHE I will be glad to talk to him to see if that is feasible.

WARNER If we approve it he will have to do a variance to eliminate the fence.

SMYTHE On the west side of the alley, my uses are residential, and a parking lot. Is there any other zoning district that could be granted that would allow those uses?

GOLTRY Any zoning district where you are having a parking lot commercial, it now requires a Conditional Use for ancillary, so no not the way it has been advertised.

SMYTHE I will be glad to talk to my applicant about applying for a variance.

MOTION: Approve subject to staff recommendations.

ANDERSON moved, **ALDRICH** seconded the motion.

HENTZEN Does that ignore the neighbors?

SCHLEGEL I don't think so. It is something the neighbors can work out with the applicant where they place that wall along Lorraine. All that the Code requires is that they put a screening wall along Lorraine. Now it can be setback 6-8 feet.

MOTION carried 10-0.

7. **Case No.: ZON2005-43** – KDMM LLC, c/o Mark Allen (applicant); Ruggles and Bohm P.A., Tom Ruggles (agent) Request Sedgwick County Zone change from "RR" Rural Residential to "NO" Neighborhood Office on property described as;

A tract beginning at a point 130 feet West of the Southeast corner of the Southwest Quarter of Section 16, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; thence West along the South line of said SW/4, 100 feet; thence North at right angles to said line, 247.8 feet; thence East 100 feet; thence South 247.8 feet to the place of beginning, EXCEPT that portion condemned for highway purposes on Case No. B-14456, in the District Court of Sedgwick County, Kansas.

Beginning at the Southeast corner of the Southwest Quarter of Section 16, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; thence West 130 feet; thence North 247.8 feet; thence East 130 feet; thence South 247.8 feet to the place of beginning, EXCEPT highway right of way.

Beginning 247.8 feet North of the Southeast corner of the Southwest Quarter of Section 16, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; thence North 275.2 feet; thence West 230 feet; thence South 275.2 feet; thence East 230 feet to the point of beginning.

Generally located 1/2 mile east on the north side of 53rd Street North (7918 W. 53rd Street North)

BACKGROUND: The applicant seeks to rezone 2.6 unplatted acres located 1/2 of a mile east of Tyler Road, north of 53rd Street North from "RR" Rural Residential to "NO" Neighborhood Office. The application area consists of three unplatted parcels. One of the parcels is developed with a single-family residence (with on-site water and sewer) and the other two are vacant. The developed parcel has one drive access point from 53rd. The site to the west under the same ownership was rezoned in 2004 to NO. That property platted as a condition of zoning, and has redeveloped a single-family residence to an office utilizing on-site sanitary sewer and water facilities. The site has mature evergreen trees and the existing house is set back over 140 feet from the nearest side property line.

East of this development are single-family residences, a farmstead lies to the west. Sand extraction exists to the east of this site and to the immediate north, with long-term plans for residential subdivision development. Property south of the site is used for agriculture. All surrounding property is zoned "RR" Rural Residential, the two sand pits have Conditional Use permits to allow for sand extraction. Other non-residential zoning exists along 53rd approximately 3,600 feet to the west, and 680 feet to the east.

The applicant does not have long range plans for this site, and is therefore undecided on converting the existing house for office use, or building a new office building. If this request is approved, the applicant will be required to meet zoning code standards for parking, screening, setbacks, and compatibility setbacks. The previously rezoned property has three platted access points to 53rd, one of which is to be vacated upon 53rd improvements to urban standards. The size of the current application area would be limited to one additional access point based on county drive separation standards. According to the recognized trip generation estimates, office uses generate on average 11 trips per 1,000 square feet of floor area. The Unified Zoning Code restricts NO commercial uses to 8,000 square feet of gross floor area for an individual commercial use.

CASE HISTORY: None

ADJACENT ZONING AND LAND USE:

NORTH: "RR" Rural Residential with CU to permit sand extraction; sand pit
SOUTH: "RR" Rural Residential; agriculture
EAST: "RR" Rural Residential; agriculture
WEST: "RR" Rural Residential; large lot residential

PUBLIC SERVICES: 53rd Street is a paved two-lane county highway. Public sewer and water services are not available.

CONFORMANCE TO PLANS/POLICIES: This site is located within the City of Maize's "zoning area of influence," that, according to the *Unified Zoning Code*, triggers the need for the City of Maize's Planning Commission to review this request. The *Wichita-Sedgwick County Comprehensive Plan* land use guide map places this site on the eastern edge of the Maize 2030 Urban Growth Area. The County's "office location guidelines" state that office uses should be located adjacent to arterial streets; local, service-oriented offices should be incorporated within or adjacent to neighborhood scale commercial development and low density office use can serve as a transitional land use between residential uses and higher intensity uses. The City of Maize's adopted *Comprehensive Development Plan 1980-2000* future land use map does not cover this application area, but is under revision. As stated, this request would be an expansion of an existing zoning and use.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All surrounding property is zoned "RR" Rural Residential, with a mix of uses ranging from agricultural, large-lot residential and sand extraction. The character of this area appears to be one of transition from an area dominated by agricultural, large lot residential area and resource-based mining uses to more intensive uses including: vehicle repair, school bus parking and repair, office and construction services.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential and is developed with a single-family residence. The site is suitable for use as currently zoned.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: All surrounding properties are zoned "RR" Rural Residential, which is a relatively restrictive zoning district when compared to other residential districts and non-residential districts. Approval will introduce the potential for approximately six additional uses not currently permitted by the existing zoning (e.g. multi-family, assisted living, group home, medical service and office).
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The most significant hardship to the applicant if this request is denied would presumably be the loss in income based upon a residential versus an office sales price.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is not consistent with all of the locational guidelines, but is within the Maize 2030 Urban Growth Area.
6. Impact of the proposed development on community facilities: The site utilizes on-site sewer and water facilities; therefore those same public facilities will not be impacted. The applicant may be required to upgrade those on-site facilities due to the change in use. 53rd Street is capable of carrying the expected traffic generation rates, however additional right-of-way may be requested at platting if the site does not meet current minimums. Likewise, the platting process will determine access points, subject to the County drive separation standards.

MOTION: To approve subject to staff recommendations.

JOHNSON moved, **HILLMAN** seconded the motion, and it carried (10-0).

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8. **Case No.: CON2005-43** – M & L Land Company (Marsha Meyersick) and Cingular Wireless (Curtis Holland) Request Sedgwick County Conditional Use to permit a 195-foot tall wireless communication facility on property described as;

A 100 foot by 100 foot tract of land situated in the East Half of the Southwest Quarter of Section 11, Township 26 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, more particularly described as follows:

Commencing at the Southwest corner of said Section 11, said point bears South 01 degrees 17'07" East, a distance of 2643.20 feet from the Northwest corner of the Southwest Quarter of said Section 11; thence North 69 degrees 38'07" East, a distance of 1571.52 feet to the POINT OF BEGINNING of said 100 foot by 100 foot tract; thence North 90 degrees 00'00" East, a distance of 100.00 feet; thence South 00 degrees 00'00" East, a distance of 100.00 feet; thence South 90 degrees 00'00" West, a distance of 100.00 feet; thence North 00 degrees 00'00" West, a distance of 100.00 feet to the POINT OF BEGINNING. Generally located 1/8 mile north of Highway 254 and 1/4 mile east of 127th Street East.

BACKGROUND: The applicant's are seeking a Conditional Use to permit a 195-foot tall lattice wireless communications facility. The application area is zoned RR Rural Residential, is 100 feet by 100 feet square in size and is located approximately 450 feet north of Highway 254 and 1,530 feet east of 127th Street East. The property owners' own the 62 acres surrounding the application area. The application area is unplatted. Within the 100 by 100 square-foot application area the applicant proposes to construct a 60-foot by 60-foot fenced compound that would contain the self-support tower, equipment shelter and accessory equipment. Access to the site is via a gravel frontage road located on the north side of Highway.

The applicant indicates they need a tower in this general area in order to improve customer service for Cingular Wireless, specifically in building coverage between Greenwich and 159th streets, and between 77th and 45th streets north. There are not any structures located within 1,000 feet of the proposed facilities. The applicant indicates that closest existing tower is located approximately three miles to the southwest of the application area with another existing tower located over four miles to the east. Neither one of these structures are located in the target service area in a way that will effectively address the company's service delivery objectives.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: RR Rural Residential; agriculture
SOUTH: RR Rural Residential; agriculture
EAST: RR Rural Residential; agriculture
WEST: RR Rural Residential; agriculture

PUBLIC SERVICES: The site does not have access to sewer or water services, nor does the use need them. Access to the site is via a gravel frontage road.

CONFORMANCE TO PLANS/POLICIES: The *2030 Wichita-Sedgwick County Comprehensive Plan* depicts this site as appropriate for "rural" uses. The rural category is intended for those lands located outside of the 2030 urban growth areas for the incorporated cities of located within Sedgwick County. Recommended uses include agriculture and rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County. The *Wichita-Sedgwick County Unified Zoning Code* requires wireless facilities to be setback one foot for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. The *Wireless Communication Master Plan* contains location and height guidelines, design guidelines and co-location requirements that have been incorporated in *The Wichita-Sedgwick County Unified Zoning Code* as Supplemental Use Regulation g. In general, the Wireless Plan promotes a wireless system that minimizes the height and number of support structures necessary to provided effective services.

RECOMMENDATION: The main focus of the "Wireless Communication Mater Plan" is to encourage effective wireless service while minimizing the number and height of support towers, and the visibility of the equipment needed to provide the service. The plan includes design guidelines that indicate: co-location is preferred to new construction; the character of the area should be preserved as much as possible; minimize the height, mass or proportion of the facilities and minimize the silhouette presented by the support structures and antenna arrays. To that end a monopole support structure has generally been found to be more consistent with the plan's recommendations than a lattice tower. The plan states that monopoles are favored over lattice-type structures to a height of at least 150 feet. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following Conditional Use restrictions:

- A. All requirements of Section III.D.6g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a monopole with a maximum of 195 feet in height and shall not be lighted unless required by the FAA.
- D. The applicant shall obtain FAA approval regarding "objects affecting navigable airspace" and "impacts to terminal instrument procedures: for the proposed facility, and shall comply with all FAA conditions of approval. The applicant shall submit a copy of FAA approval to the MAPC and County Code Enforcement prior to the issuance of a building permit.
- E. The site shall be developed in general conformance with the approved site plan and elevation drawings. All improvements shall be completed before operational.
- F. The site shall be developed and operated in compliance with all federal, state and local rules and regulations.
- G. If the Zoning Administrator finds that there is a violation for any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The properties surrounding the application area are zoned RR Rural Residential and primarily used for agricultural purposes. The character of the area is rural with increasing development pressure due to its proximity to Highway 254 and growth pressure from the cities of Wichita, Bel Aire and Kechi.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR Rural Residential and is currently used for agriculture. The site could continue to be used for agricultural uses or for large-lot residential uses permitted by the RR district or other uses permitted by right in that zoning district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects on properties in the area should be minimized by the recommended conditions of approval.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: According to the applicant, approval would improve wireless services specifically for Cingular customers and for other public carriers needing to improve service in the area who could utilize the proposed wireless facilities. Denial would presumably cause the property owner a loss of income and potentially limit wireless service in the area identified as being deficient in service.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita-Sedgwick County Comprehensive Plan depicts this site as appropriate for "rural" uses. The rural category is intended for those lands located outside of the 2030 urban growth areas for the incorporated cities of located within Sedgwick County. Recommended uses include agriculture and rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County. The Unified Zoning Code requires wireless facilities to be setback one foot for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. The application appears to comply adopted policies.
6. Impact of the proposed development on community facilities: FAA approval should ensure that the proposed facility does not detrimentally impact community facilities.

MOTION: To approve subject to staff recommendations.

JOHNSON moved, **HILLMAN** seconded the motion, and it carried (10-0).

9. **Case No.: CON2005-42** – Miguel Diaz & Rosa Martinez Request Conditional Use for nightclub (in association with restaurant) on property zoned "LC" Limited Commercial on property described as;

Lot 1, except the South 85 feet of the West 198 feet thereof, and except the East 113 feet thereof (now platted as J M Murphy Addition), in Heersche's Replat, Wichita, Kansas, Sedgwick County, Kansas. Generally located on the southeast corner of Seneca and 27th Street South.

BACKGROUND: The applicant is requesting a Conditional Use for a nightclub, on a portion of Lot 1, the Heersches Replat Addition. The site, on the southeast corner of 27th Street South and Seneca Street, is currently zoned "LC" Limited Commercial. The site is currently a restaurant/drinking establishment (DER license), which limits its liquor sales to 50% of the total sales. A nightclub allows unlimited liquor sales, regardless of whether or not there are food sales. The applicant proposes to keep the DER as the site's main use, but add live music or a DJ and dancing for patrons, which is considered a nightclub in the city: Art.II, Sec.II-B, 9(b) of the Unified Zoning Code (UZC). Nightclubs are a permitted use in the "LC" districts, but require a Conditional Use when within 200 feet of church or a place of worship, public park, school, or residential zoning: per Art.III, Sec.III-D(w) of the UZC. The site is located within 200-feet of both "SF-5" Single-family Residential, "B" Multi-family Residential zoning and a church

The character of the surrounding neighborhood is mostly small stand alone and retail - office strip development, with the east side of Seneca Street from Pawnee Boulevard to 31st Street South striped out and zoned predominately "LC", with some "GO", General Office. On the west side of Seneca, there are larger retail - office strip developments (zoned "LC"), confined to the Pawnee - Seneca and 31st - Seneca intersections. There are a few "GO" and "NO", Neighborhood Office sites between and beyond these intersections, including some single-family residences having been converted to offices. Except for those just noted exceptions beyond the arterial intersections, the west side of Seneca is zoned predominately "SF-5" and is developed as single-family residential. Also along Seneca's west side is Saint Anne's church and its abutting school, both zoned "SF-5" and located midway between Pawnee and 31st and across Seneca from the site. There are other restaurants on both sides of Seneca, including both drive through and sit down types. There is a sports bar, with a DER, located south of Seneca and one block west of 31st, and it is possible there are a few other DERs, but they are not readily evident. There appears to be a closed nightclubs/drinking establishment along this section of Seneca. It is located in a small strip building on the northwest corner of the Seneca - Pawnee intersection, across Seneca from a church. There are a few vacancies along this section Seneca, but recent stand-alone developments including a Starbucks, a bank, an Aldi grocery store and a Walgreens. Behind the office and retail development along Seneca, there are single-family residences ("SF-5" zoning) and one apartment complex, zoned "B". A notable development exception in the area is the Circle Cinema, which is a Sexually Oriented Business (SOB) and is located a block and a half directly north of the site.

East, across Seneca, from the site are the previously mentioned Saint Anne's church and its school, both zoned "SF-5". There is also a medical office, zoned "GO", east, across Seneca from the site. North of the site, across 27th, there is a "GO" and "B" zoned (130-150-feet from the site) apartment complex. Also north of the site are a convenience store, a small retail strip and vet clinic all zoned "LC". Beyond the apartment complex, approximately 400-feet east of the site, there is another church. East and abutting the

site is a message therapy office, zoned "GO". East of the message therapy office (150-feet) there are single-family residences, all zoned "SF-5". Immediately south of the site is a vehicle repair, limited, garage, then a recently constructed Aldi grocery store and a vacant office, all zoned "LC".

As shown on the site plan, the approximately 6,400-square foot building which currently houses the DER and is where the proposed nightclub will also be located has 67 parking spaces. The Fire Marshall has posted a maximum capacity of 220 people for the building. A DER with the capacity for 220 people would require 73 parking spaces (Art.IV, Sec.IV-A), which the site plan does not show. The applicants have proposed the night club's days of operation to be Thursday – Sunday, with its hours of operation between 9PM – 1AM, Thursday – Saturday and 9PM - 12AM on Sundays. The existing DER is currently open every day. It is not known if the hours of operation for the DER and the proposed nightclub overlap. It is not known if the entire area of the building will be used for the nightclub or just a portion of it. Regardless, according to the site plan there is not enough on-site parking for a nightclub at this site/building (Art.IV, Sec.IV-A). However, the site has more parking on its lot than what the site plan shows. The applicant needs to provide Staff with the total parking on the lot plus the size of the vehicle repair, limited, garage that it shares the lot with to determine if there is enough parking for all the businesses on the lot, including the proposed nightclub. If it is then determined that there still is not enough parking, the applicant can seek to remedy it by applying for an Administrative Adjustment or a Variance. The site plan shows no landscaping, screening or outdoor sitting.

CASE HISTORY: The site was platted as a part of the Heersches Replat, which was recorded in with the Register of Deeds December 28, 1967. Per the records as shown on the City's GIS, the building for the proposed nightclub was built in 1978.

The MAPC considered this request at their October 20, 2005 meeting. The MAPC recommended denial (10-0) for the Conditional Use to allow a nightclub at the site.

ADJACENT ZONING AND LAND USE:

NORTH:	"LC", "GO", "B"	Convenience store, retail strip, apartments
SOUTH:	"LC"	Vehicle repair limited, grocery store, vacant office
EAST:	"GO", "SF-5"	Message therapy, single-family residences
WEST:	"SF-5", "GO"	Church and its school, medical office

PUBLIC SERVICES: The site has shared access onto Seneca Street and two drives onto 27th Street South, which in turn intersects Seneca. Seneca is a five-lane arterial street at this location. The current traffic volume along this portion of Seneca is approximately 18,000 vehicles per day. 27th Street South is a local residential street. The 2030 Transportation Plan projects no changes to either street. All utilities are available to the site.

CONFORMANCE TO PLANS/POLICIES: The site is identified by the Land Use Guide of the Comprehensive Plan as appropriate for "Local Serving Commercial" development. This category's uses are local in their customer base and include commercial, office, personal services, medical, auto repair, grocery stores, florist shops, service stations, restaurants and on a limited presence basis mini-storage warehousing and small scale light manufacturing.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan Objective II.B. is to "Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments."

The Unified Zoning Code requires a Conditional Use for a nightclub when it is located within 200 feet of a church or a place of worship, public park, school, or residential zoning. The site is not currently permitted for entertainment, including dancing for patrons. Approval of a nightclub Conditional Use would introduce live entertainment, or music by a DJ, dancing by patrons, and unlimited alcohol sales on this site.

RECOMMENDATION: The location of Saint Anne's and its school, directly across Seneca Street from the site appear to make the proposed nightclub somewhat problematic. However it would seem the proposed hours of operation for the nightclub are mostly when the school is not in session except for possibly special, but normal evening school activities such as parent-teacher nights, open house and nights when there are performances by students in plays, concerts or athletic events. Even then, the time when the nightclub would be opening and when these evening school activities would be ending would represent the main possible cross over times for these two very different activities. The hours for church activities would also include some cross over time with the proposed nightclub, including special services during church recognized holidays that include services held at night. There is a closed drinking establishments/nightclub in the area. The closed drinking establishments/nightclubs is not as large as the 6,400-square foot building the proposed nightclub will be located in. Staff has received negative comments from the neighborhood about the proposed nightclub in regards to its proximity to single-family residences. These single-family residences are located approximately 150-feet east of the site, with a "GO" zoned message therapy building between them and the proposed nightclub. There is solid screening between the message therapy's property and the single-family residences. The applicant has supplied staff with proposed days and hours of operation, with the proposed nightclub as a supplemental use to the full service restaurant. Therefore based upon the applicant's proposed hours and days of operation and information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a nightclub be APPROVED, with the following conditions;

- (1) Days of operation will be Thursday – Sunday. Hours of operation will be between 9PM – 1AM, Thursday – Saturday and 9PM - 12AM on Sundays.
- (2) The operation of the nightclub will only be allowed as long as there is a restaurant/DER as the primary use in the building.
- (3) The nightclub will provide either live music or music provided by a DJ for dancing by patrons of the nightclub.

- (4) A revised site plan will be provided that will determine if the site has enough parking for the proposed nightclub and restaurant.
- (5) Solid screening will be erected along the site's east side, where it abuts the message therapy's site. The screening will be shown on the revised site plan.
- (6) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The requested Conditional Use will be one the only drinking establishments/nightclub along this portion of Seneca Street, it would also potentially be the largest. The striped out east side of Seneca (zoned "LC with some "GO") has been developed as small retail and offices, with the Aldi's grocery store and the Walgreens being two of the more recent and larger developments. Other developments include both drive through and sit down restaurants, including possibly some other restaurant/drinking establishment (DERs), although they are not readily evident. The west side of Seneca has its larger retail and office development (zoned "LC" and some "GO") mostly confined to the Seneca – 31st Street South and the Seneca – Pawnee intersections. Between these intersection's large retail and office development, the remainder of the west side of Seneca is primarily zoned "SF-5", with single-family residences. There is a church, a school (both zoned "SF-5") and a medical office (zoned "GO") located across Seneca from the proposed nightclub. The current development exception for the area is the Circle Cinema, a Sexually Oriented Business (SOB), whose on-site sign advertises itself as having been at its current location for 30-years. The City is currently revising its SOB regulations.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LC" Limited Commercial, which accommodates office and retail uses, including a DER, the site's current use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The unlimited liqueur sales, the noise from the music and dancing, the hours of the nightclub and its parking all could have a detrimental impact on the surrounding residences, the school and the existing neighborhood serving businesses, that are in close proximity to the proposed nightclub. The applicant's proposed restrictions on the nightclub's days and hours of operation, plus it's being a supplement to the restaurant business and the other conditions of the Conditional Use will help minimize the negative impact.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the site and the area as appropriate for "Local Serving Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan does not contain guidelines specifically for nightclubs, drinking establishments or taverns. However, the Plan does have an objective to minimize detrimental impacts of higher intensity land uses located near residential living environments. The conditions of the Conditional Use address this objective of the Plan.
5. Impact of the proposed development on community facilities: It is possible that approval of this request could result in an increased demand for police services.

WARNER Did you say the screening was not a requirement?

LONGNECKER Screening is a requirement, Condition #5.

ROSA MARTINEZ, 2101 N. Market, I are buying the restaurant. We have been here for a little over a year, and this is a restaurant and we want to generate some more revenue. My entire family works here. I would like to offer live music or a D.J. to see if it can bring my business up a little more.

HILLMAN What have you done about negotiating with Midas about additional parking?

MARTINEZ We have talked to some of the neighbors, and I spoke to someone from the Midas store, I think the person that runs the store and they don't see a problem with us using there parking. We are only short 6 parking spaces; maybe it needs to be striped differently.

HILLMAN Since it is short on business now she is not using the parking that she has got.

PASTOR ROGER LARSEN 820 W. 27TH Street South, Wichita, KS 67217 I am the pastor of the Seven Day Advent Church. We are on the corner on Osage and 27th Street. We have a church, the hall, and a community services center, and a K-10 school here. Some of our church or school activities go after 9 p.m. at night sometimes. Let me speak a little about the neighborhood. I live at 25th and Osage. Crime has been an issue in that area, and I have a church member who is a police officer has told me how many times he has issues with the Circle Cinema, and how many times he has had to go there at night and stop some of the robberies that have happened. In a way crime is better even though I say it is a concern, in the past our church has been broken into. I am the senior pastor there and a former senior pastor had his computer stolen right out of his office. We have had vandalism in the church. Since I have been here for two years we have not had vandalism. I am concerned about the events that we have at the church and we have these activities at night on a weekly basis. We rent our church. We have meetings and church on Saturday night. That property has not done well. We have thought about purchasing that building, or that lot and adding it to our community service center. There are churches all around that area.

SHARON BURTON, 901 Sutherland, Wichita, KS I am here today because I am the principal of the Wichita Christian Academy, which is at 2725 S. Osage. Our school is our complex that faces Osage. Our parking lot and playground is this area. Here we have spent a lot of money the last few years on security measures because a lot of people like to drive through there. We have put in increase lightening. We have 68 children in our school and we have lots of nightly activities. I have teenagers that drive to the school. We ask that you consider that we are not the only school or church in the area and to add the kind of business that would be a hazard and a security risk to my children. I would ask that you not do that.

JERRY J. THORNTON, 2740 S. OSAGE I have lived in this area for 32 years. That restaurant that they are talking about has not got much of a parking lot at all. I don't think it is a good idea to have a nightclub there because there will be violence, crime, drugs, alcohol, prostitution, and that neighborhood is quite. I am against a nightclub being in there. A restaurant is fine but not a nightclub.

FATHER KENT HEMBERGER, 201 S. SENECA, ST. ANNES CHURCH The building across from the restaurant is the middle school, the parish hall and meeting rooms for the Scouts. Almost all the parish activities that happen at night happen here in this building, and in the parking lot adjacent to proposed use. I live here and have been in this parish for 14 years, and I have a concern about security. It is just the last very few years that we have really regained a sense of security in our neighborhood from all the problems when they were dragging Seneca and etc. The problems of vandalism and trash have gone down. We fear that going back up again; in a sense losing what we have gained. That sense of security is very important in terms of our work as a church because we invite people to come out and many people talk about children, young people, and students, but also for the elderly because once there is a couple of bad instances that close they will read about it in the parish and they won't come because they are afraid. One activity that we have in the summer, we have a baseball program that involves 500-600 students that will involve all of the parking lots. We are against the nightclub use of this property.

IRENE ARMSTRONG, 1109 Greenfield, Wichita, KS 67217 I am block captain and past President of the Southwest Neighborhood Association. I canvassed from 25th to 29th Street asking for concerns from the neighborhood of what they think of this proposal. I had only one that didn't object and that was the Midas business but that was from the workers that were there. Some of the concerns were the noise, the trash, crime, the prostitution, drunk driving, illegal activities occurring in that parking lot. The Circle Cinema is two blocks north that we watch because there are child molesters that go there. The landscaping has not been taken care of and I don't think they are very neighborhood friendly now because they don't mow the yard. What will they do to enhance our neighborhood?

DARLENE NUSE, 2021 JEWELL, WICHITA KS 67213 I attend the Bethany Lutheran Church a block over on 26th Street. There are four churches in this area. There is a liquor store in this neighborhood. It has taken the police a while to get these neighborhood cleaned up and we would like to keep it that way.

TAPE CHANGE

TRICIA ARDISSION, 541 W. 26th Street South, WICHITA KS 67217 My husband and I have lived here over 26 years. My husband and I are retired military and we chose to live in the neighborhood where we live, and we chose St. Anne's as our church. Dr. Beaver who is located on Seneca right across from St. Anne's church called me last week and asked me if I had received a flyer concerning changing a restaurant into a nightclub on Seneca? He is not in favor of the proposal and my husband and I are not in favor either. People walk in our neighborhood. I walk from my home to the church, day and evening, I feel safe. Since we live in a quite neighborhood with very little crime we want it to stay that way.

MICHEAL GISICK, 2046 S ELIZABETH, WICHITA KS 67213 I am current President of the Southwest Neighborhood Association and also a member of District Advisory Board IV. Over the last several weeks I have received phone calls asking me to do whatever I can to express their concerns. My biggest concerns would be the quality of life for the area and I also have a business at Wichita Business Security Network, and we have worked very hard on crime prevention in this area, and we have been notified by the City of Wichita that crime has gone down in all the major areas 30-50 percent in most of those and, we were the only ones in the last report that showed a decrease and not an increase in crime, and we would like to keep that trend. I have no problem with them being a restaurant serving alcohol. I don't mind them serving more than 50% alcohol, I just don't want them doing it after hours and becoming a nightclub. I don't mind what people buy with their meal, but we want it to stay a restaurant. It has always been a restaurant in that building. I have been in this area for 30 years. I am opposed to this proposal.

PAUL WARD, 2827 S WALNUT, WICHITA KS 67217 We live on Barbara and it dead ends. I live on the corner lot of Barbara and Walnut. We have a total of nine houses on that street and all but two, which I couldn't get a hold of, said we can't have this in our neighborhood. We have people who are retired, and we have young couples with small children, and teenagers in our neighborhood. A lot of children walk to the activities at night because it is the neighborhood. We are totally surrounded by apartment complexes so we have a lot of children and families, and we have a good neighborhood. I am opposed of this nightclub.

ROSA MARTINEZ, APPLICANT I respect everyone's opinion because I have a family too. Obviously they are seeing this in a different way than I looked at it. As far as people coming in and prostitutes in my business I do not know about this activity. Everyone who comes in my business comes in to eat. I do not know what is going on in the parking lot. My husband and children work here, and we have never seen anything like that. I am sorry that I don't see what you are seeing. I am trying to keep myself in business and my restaurant going. I am sorry everyone feels that way. I think the landscaping is better than it was when the building was vacant and empty for years. I am sorry but I am going to keep trying.

ALDRICH Pertaining to the proposed amended on the Agenda today governing the taverns and the drinking establishments, based on staff recommendation how will that come into play?

LONGNECKER I am not aware of an amendment to taverns or drinking establishments. Staff did point out in regards to the Circle Cinema as an exception to use in the area that staff is amending the sexually oriented business regulations.

ALDRICH It says right here on Agenda Item 12.

GOLTRY That is related to changing the definitions within three other ancillary sections of the Zoning Code to make them in conformance with the new sexually oriented business regulations that would be in affect for the City. But it does not materially affect the existing tavern and drinking establishment or nightclub type regulations apart from the sexually oriented business component.

JOHNSON Does this restaurant currently serve alcohol or not?

LONGNECKER Yes, they do.

JOHNSON So some of the concerns of the neighbors is that they don't want alcohol there but it is already.

LONGNECKER They have a DER license which allows them to sell alcohol as long as it doesn't exceed 50% of the sales.

WARNER What are their hours of operations?

MARTINEZ Right now we are open 7 days a week. We open at 11 a.m. – 8 p.m. on the weekdays and 10 p.m. on the weekends.

JOHNSON This is a Conditional Use that has to meet certain requirements. If there are some activities that develop on this location that is close to illegal does that control what this Conditional Use permit would do?

LONGNECKER With the Conditional Use that we have laid out if there is any violations of those conditions it needs to be reported to the Office of Central Inspection and they would look at the operations of the nightclub and determine that if they cannot be remedied. If not the Conditional Use would be null and void. If you look at the Unified Zoning Code and the Comprehensive Plan we don't have any specific conditions about nightclubs. The Zoning Code talks about what you have in regards to non-residential activities abutting residential activity, and how you can mediate nuisances in regards to lighting, noise, etc., but there is no specific language concerning nightclubs. These six conditions is what we have placed upon this nightclub to be in operation including the hours of operation, the days, and also that there has to be a restaurant there as a primary use in regards to have this nightclub operate in this building.

WARNER I don't think this is an appropriate location for a nightclub.

MOTION: To Deny this application.

WARNER moved, **SHERMAN** seconded, and the motion carried (10-0).

10. **Case No.: ZON2005-41** – Breakthrough Ministries, Wilma and Henry Foster Request Zone change from "SF-5" Single-family Residential to "GO" General Office on property described as;

Lot 1, Pleasant Valley Addition, Sedgwick County, Kansas. Generally located On the northwest corner of Somerset and 21st Street North.

BACKGROUND: The applicant requests a zone change from "SF-5" Single-family Residential to "GO" General Office on a 3.04-acre lot located north of 21st Street and west of Somerset. The subject property is a platted lot and is developed with a church. The applicant intends to make child care a function of the facility; under the current SF-5 zoning "Day Care, General" would require a Conditional Use. Likewise, the church intends to conduct office use for other social services in the future. Given these land use desires, and the location of this site along 21st Street North, staff felt that a zone change request to "GO" General Office would best suit the applicant's long term plans.

The surrounding area is characterized by commercial uses along 21st, with some office and multi-family residential uses in the immediate area. The property to the north, across 22nd, is zoned "B" Multi-family and developed with an apartment complex. South of the site, across 21st, is a GO zoned medical/dental facility. East and west of the site are "LC" Limited Commercial zoned retail uses. The Amidon/21st intersection is approximately ¼ mile to the west, with commercial zoning and development on all four corners. Immediately west of this site is the Little Arkansas River.

CASE HISTORY: The subject property is platted as the Pleasant Valley Church Addition to Wichita, recorded in 1962.

ADJACENT ZONING AND LAND USE:

NORTH:	"B"	Multi-family Residential
SOUTH:	"GO"	Medical/Dental Office
EAST:	"LC"	Neighborhood Shopping Center
WEST:	"LC"	Retail, Supermarket

PUBLIC SERVICES: The subject property has frontage along 21st Street North, a four-lane arterial street with a 50-foot half-street right-of-way (ROW). A center left-turn lane exists at this location for northbound left-turns onto Somerset. The site has right-in right-out only access to 21st. The site also has one access point from Somerset, a paved local street with a 60-foot ROW, and two access points from 22nd, a paved local street with a 60-foot ROW. Current traffic volumes on 21st are approximately 17,473 vehicles per day. The 2030 Transportation Plan recommends that 21st be a five lane arterial, as it currently exists at the application area. The Capital Improvement Program does not include projects for this portion of 21st. The site has municipal water and sewer.

CONFORMANCE TO PLANS/POLICIES: The Wichita Functional Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Major Institutional" use, consistent with the church on the site. The Office Locational Guidelines

of the Comprehensive Plan recommend that office sites should be located adjacent to arterial streets and indicates that low-density office uses can serve as a transitional land use between residential uses and higher intensity uses.

The site is within the western edge of the 21st Street North Corridor Revitalization Plan; that plan identifies "Institutional/Educational" as the preferred land use. The plan also recommends a "Gateway Feature" immediately west of the site, aligned with the Little Arkansas River. The plan makes no street improvement recommendations for this portion of 21st Street North.

RECOMMENDATION: Although the requested zone change would be to "GO", the intended land use of childcare and social services is consistent with plans for this area. This site should be appropriate for other office uses over time. Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by office and retail uses along 21st Street North, with multi-family residential uses located north of the site. The request is compatible with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-5" Single-family Residential, which accommodates churches and places of worship. However, under the current zoning the existing church would be required to obtain a Conditional Use for the desired childcare use. And, the church would be required to seek a zone change for future desired social service offices. The property is more suited for office or institutional uses than for residential uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The standards of the Unified Zoning Code and the Landscape Ordinance should limit noise, lighting, and other activity from adversely impacting the multi-family residential area north of the site. As long as the site continues to function as a church, the impact of rezoning will most likely be unnoticed by the residential neighbors.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Major Institutional" development. The Office Locational Guidelines of the Comprehensive Plan recommend that office sites should be located adjacent to arterial streets and indicates that low-density office uses can serve as a transitional land use between residential uses and higher intensity uses. The 21st Street North Corridor Revitalization Plan identifies the site as appropriate for "Institutional/Educational" land uses.
5. Impact of the proposed development on community facilities: No detrimental impacts on community facilities are anticipated.

ALDRICH I was at the DAB VI meeting last night, and this Item did come up and the discussion will not sway my vote one way or the other.

JESS MCNEELY Presented the staff report.

RANDY ESTERLINE, agent for Breakthrough Ministries I would like to establish our intent of operation, although "GO" General Office allows many permitted uses, we intend to continue the current ministries and worship service schedules of the church. In addition, we are preparing to begin a latchkey program within certain areas of the building with no intentions of operating group homes, residence nor do we have any accommodation to do so. We began preparing for this latchkey program since June 2003. Our goal is to be in complete compliance with the Law. We have had Central Inspection, Fire Department, and the Health Department visit our buildings, and they have made suggestions and requirements for our latchkey program, and we have made those changes as well as made the application process with KDHE in Topeka. The final pending Item is the zoning. We have children in our community that are home alone before and after school, and Breakthrough Ministries desires to provide a safe and productive, and positive center for the families in our community. We have had an opposition neighbor that we were made aware of at last night's DAB meeting. We would offer up under a protective overlay for the group residence (limited), group residence (general), group home (limited), group home (general), group home (commercial), correctional replacement residence (limited) and correctional replacement residence (general). We offer these due to the opposition last night.

ALDRICH Part of the concerns from some of the DAB members last night was in regards to some sort of protective fencing along the property close to the river and a major arterial street, would that be something you would be opposed to?

ESTERLINE Actually, no we would not be opposed to that request, but in our quest to get to this point for how we will be licensed and the square footage that we have inside our building, inside our building is a gymnasium we are not required the playground space outside which would mean that we would not be taking the kids outside for recreation and would not need the fencing.

ALDRICH So they would be strictly inside and not out?

ESTERLINE Yes. We will be licensed approval for 120 children and we have 4,930 square foot.

HILLMAN How do kids get to your facility and at what times do they come and go?

ESTERLINE Truthfully we have not set the hours yet.

HILLMAN Will they be walking to and from school or before school or just after school?

ESTERLINE It will be before and after school.

HILLMAN How do they get to your school?

ESTERLINE They will be dropped off by their parents.

HILLMAN So it will be impossible for the kids to walk down the street to your school?

ESTERLINE They will have to be signed in by their parents. They will have to be escorted.

HILLMAN How many driveways do you have on 21st Street to bring them in and out? That is a very busy street.

ESTERLINE Our main driveway is off of Somerset, and another off of 22nd Street. We have one driveway off of Somerset that we do not use because it causes too much traffic confusion at the stoplight. The only driveway entrance off of 21st is right here, and by the time you are there that is a one-way directions going west.

HILLMAN So if I was a parent and had a 1st, 2nd grader that I wanted taken care of, I would have to leave work at 2:30 or 3:00 p.m., and then drive them there and drop them off and come back later to pick them up?

ESTERLINE Children that will be coming from school will be brought there by USD259.

HILLMAN So the school will bring them.

WILMA FOSTER (can't hear at podium)

HILLMAN So they will have a bus load? You will be depending on the school drivers?

WILMA FOSTER We will be working in conjunction with USD259, and we will be a provider for the parents to drop the children off in the morning. They go onto work. The school buses that the children attend will come in pick up the children and take them to school.

HILLMAN Then they will bring them back?

FOSTER Yes, instead of taking them home and dropping them off at the corner they will bring them to our location, and the children will remain there until the parents pick them up after or.

HILLMAN If I were depending on school bus driver to do this, I have the same problem that the DAB had with the fencing along the river. I don't see how you will keep them out of there.

FOSTER We are not even close to the river. It is across the parking lot. The busses come up under the carport and the door is right there and the children come in, and go to the gym. This is for children from K-5th grade. These are not preschoolers.

HILLMAN You will have multiple staff to meet the busses?

FOSTER Of course we will.

MOTION: Approve subject to staff recommendations.

MARNELL moved, **ALDRICH** seconded, and the motion carried (10-0).

DUNLAP The applicant offered the Protective Overlay, we are not imposing that in the motion?

MARNELL No.

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11. **Case No.: DR2005-03** - Request Amendment to The Wichita-Sedgwick County Subdivision Regulations to add provisions regarding Urban Fringe Development Standards and to delete Lot Bundling Development Standards

SCHLEGEL You may recall that last December I brought before you the Urban Fringe Development Standards. They were policy statements regarding the Urban Development in the area around the fringes of the Cities. Those policies were recommended by you and then adopted by both the BOCC and the WCC. Since that time we have been working with staff from both the City and the County as well as the Wichita Area Builders Association to develop the Subdivision Regulations that are needed to implement those policies. The amendments are proposed to implement three policy areas and deal with the Water Supply Systems, Community Sewer Systems (CSS) and Arterial Paving. I will go through the delineated version, which was in your Agenda packets and explain briefly.

WARNER Is the only place that you can use the individual wells outside of a city's growth area?

SCHLEGEL Correct, or where there is neither a municipal or rural water district system available. For example, within an urban growth area of a city, if that city says we will never supply water to that property then the developer would be able to look at individual domestic water wells for those lots.

DUNLAP One acre or greater.

WARNER When these are turned over to the city, who maintains it after it is in? Does it go to the city for ownership and maintenance just like the sewer does?

SCHLEGEL Yes. In the case of a community water system installed in a subdivision then that city which plans to extend its municipal services out to that subdivision then would take over ownership and maintenance of the well and the distribution system and then those homebuyers of that subdivision would become part of the rate base and they would pay a utility rate to that city.

ALDRICH The contractor would put in connecting points in the event that service ever got out that way?

SCHLEGEL Yes, that's the plan.

HENTZEN If a homeowner develops or puts in a private well and then the city comes along and decides it is their territory, and it is in reference to the last observation that you made about who owns and who maintains, could the homeowner hook onto the municipal water supply and keep their well for their lawn, pasture, or whatever?

SCHLEGEL Only if it is community water system for that subdivision, a central well and distribution system; in that case the city would take control, but in the case where the city municipality indicated that they could not in the foreseeable future extend their municipal services to that subdivision and the subdivider winds up putting in individual water wells then no, the municipality would not control those wells.

HENTZEN If that subdivision got a basketball court, or tennis court, could they retain that original source of water and distribution or would it automatically be the ownership of the city?

SCHLEGEL I'm not clear on your question.

HENTZEN You have a subdivision and they have a community well and distribution system put in according to what you are telling us are the standards, and then the municipality comes along and says we are here and we are going to supply you water and therefore you don't need that water system. Can that development continue to own and use the water out of that well that they put in?

SCHLEGEL The idea here that is being proposed is that within those urban growth areas, those are the areas that these cities have said that they plan to extend municipal services, both sewer and water or some combination so the idea is to have that community water well and that community water system turned over to the municipality to own and maintain and then have those folks in that subdivision pay a utility rate for the purposes of maintaining and operating that system. The idea is not to leave the control of that with the neighborhood. It is to turn it over to the municipality and then that allows for that system to eventually be incorporated into the municipality system.

DUNLAP I think you are talking about two different things. I think you are talking about a home service where we open the tap and get water to drink, and Bud is talking about irrigation purposes.

WARNER Even so, once they put the system in they immediately turn it over to the city, and the city owns it and operates it, and so ten years later when they come and are able to supply water they already own it.

SCHLEGEL If you are talking about an irrigation system for that common area then no, that it is not something the municipality needs to own and operate. We are talking about domestic supply where in order to guarantee the safe and secure operation of that system it is best to get it turned over to a municipality that has the resources for operating it.

SCHLEGEL Briefly explains the standards contained in Section 8-103 (C) (5) Community Sewer System.

ALDRICH It says the County Manager will establish an oversight committee. What about a City representative?

SCHLEGEL Yes, we will have City input and representatives on that committee, and the committee will have a broad and cross section of interest on there.

DUNLAP I didn't see the need for an oversight committee when we have an engineering department, and I didn't see the need for an oversight committee when it has to go through subdivision where regulations would be in place but if we are going to mail to a whole bunch of different municipalities together than maybe we need it.

SCHLEGEL It will also have some private sector representative on that committee as well.

DUNLAP You have that on the Subdivision Committee already. I don't see a need for that but I am not going to object but when you introduce the idea of milling these together it makes sense to me, otherwise it doesn't.

WARNER Is there any action on our part that needs to be taken?

SCHLEGEL We are looking for a recommendation, and this will go before both Governing bodies for adoption.

WARNER This was approved by Subdivision?

HENTZEN I wonder if the Director of WABA is thinking to tell us what the developers think.

WARNER He is welcome to speak but it was my understanding that they have been a party to this and approved this from day one.

WES GAYLON, WABA, John has done a very good job presenting this to you, and it was recommended by the Subdivision Committee unanimously to the MAPC for your consideration. We are asking you to approve and support the policy, and the standards were developed over a period of six years. Those of us that worked on this have the agreement of both the City and County officials, consultant engineers, developers and others that had a concern about this. This is a better policy and standards that are in place that will address concerns that we have all had over the last six years.

MOTION: To approve the Subdivision Amendments as written.

ALDRICH moved, **ANDERSON** seconded, the motion.

DUNLAP On page 3, we introduce a word in the Code that I haven't seen before and I don't like it. I would prefer a benefit district charge than a fee. Also, I will tell you we are creating some pretty favorable pricing situations in the immediate future, most of which will work itself out pretty quickly but this doesn't apply to anybody that has already received a plat approval for their development whether or not they have sold the lot. It doesn't apply to them. It only applies to new subdivisions coming to us.

MOTION carried 10-0.

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12. **Case No.: DR2005-30** - Request Amendment to The April 19, 2001 Edition of the Wichita Sedgwick County Unified Zoning Code to amend definitions and use regulations for uses including: night club in the City, personal care service, personal improvement service, sexually oriented business, the OT-O use regulations, and taverns and drinking establishments, and to nonconformities

DATE: October 20, 2005
TO: Metropolitan Area Planning Commission
FROM: Donna Goltry, Principal Planner, Current Plans
SUBJECT: DR2005-00030 Amendment to the April 19, 2001 Edition of the Wichita-Sedgwick County Unified Zoning Code to amend definitions and use regulations for uses including: night club in the City, personal care service, personal improvement service, sexually oriented business, the OT-O use regulations, and taverns and drinking establishments, and to nonconformities.

Background: The regulation, permitting and licensing of adult entertainment establishments are currently governed by Chapter 3.05 of the City Code. Adult entertainment establishments (or sexually oriented businesses) are not currently defined or regulated through the Wichita-Sedgwick County Unified Zoning Code (UZC) within the City of Wichita.

Sedgwick County already has regulations in place to require sexually oriented businesses to be in compliance with the County's Adult Entertainment Code, to prohibit establishment of businesses within 1,000 feet of a church, school, public park, residential dwelling or other adult establishment, and to amortize existing businesses not in compliance with these requirements (Sedgwick County Resolution No. 84-01, October 5, 2001; as amended Resolution No. 86-04, May 19, 2004).

Beginning with a City Council workshop on February 1, 2005, and following a moratorium enacted on February 8, 2005 on the issuance of permits and licenses for new adult entertainment business, staff has been comprehensively addressing the negative effects of adult entertainment businesses upon neighboring properties and the community as a whole. A conceptual overview of proposed amendments to the Wichita-Sedgwick County Zoning Code and the existing adult entertainment licensing ordinance were discussed at a City Council Workshop July 26, 2005. At the regular meeting on August 2, 2005, the moratorium was extended until November 15, 2005 to allow staff time to (1) draft more specific UZC and licensing ordinance amendment language, (2) present the proposed UZC changes to District Advisory Boards for review and comment; and (3) present final proposed UZC amendments to MAPC in October.

During the months of September and October, each District Advisory Board (DAB) received a presentation on the proposed amendments and provided comments to staff. A copy is attached to this memo of the DAB Agenda referral item (Attachment 1) and a report entitled "District Advisory Board Overview: Proposed Sexually Oriented Business Zoning and Licensing Code Amendments" (August 31, 2005) (Attachment 2). Also, a copy of minutes from DAB meetings is attached (Attachment 3).

The comments heard at the DAB meetings indicated general support for the idea of restricting adult businesses (or sexually oriented businesses) to more intensive zoning districts, as proposed by staff. The proposal is to limit these businesses to "GC" General Commercial, "LI" Limited Industrial and "GI" General Industrial, and to prohibit them in the "OT-O" Old Town Overlay District. The "D-O" Delano Overlay District already prohibits them. Currently these businesses are viewed as general retail, theater, hotel and/or office uses allowed in less intensive zoning districts, including "GO" General Office (hotels), "NR" Neighborhood Retail (depending on floor area), "LC" Limited Commercial, "OW" Office Warehouse, and "CBD" Central Business District. The other restriction would be to require adult businesses (or sexually oriented businesses) to be separated at least 500 feet away from a church, public or parochial school, public park, day care center, residential zoning district, or the "OT-O" Old Town Overlay district.

The presence of adult businesses was seen as potentially jeopardizing the substantial investments being made in certain areas of the city, especially in the downtown and the Old Town areas. It was also viewed as discouraging families from visiting family-friendly attractions that might be in the vicinity and being a deterrent to residential use nearby.

The issue of phasing out (amortization) existing adult businesses generated a wider range of comments at the DAB meetings. One of the concerns raised were about the general concept and/or fairness of amortizing the use and its legality, as well as protection of First Amendment rights. Staff members discussed that amortization of adult businesses (or sexually oriented businesses) has been upheld in court cases (see fuller discussion in Attachment 3-DAB meeting minutes). Another significant concern was the short length of time for amortization proposed.

A delineated copy of the proposed amendments (Attachment 4) is attached. If recommended, the amendments will be placed in ordinance and resolution form for City Council and County Commission approval.

Recommended Action: Based on information available prior to the public hearing, staff recommends approval of the proposed amendments to the Unified Zoning Code.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The zoning districts allowing adult businesses (or sexually oriented businesses) would be the most intensive zoning districts in the City. The "GC" General Commercial zoning district tends to have fewer residential uses nearby than the other less intensive commercial districts; residential use is prohibited in the "LI" Limited Industrial and "GI" General Industrial districts. The separation requirements would increase the distance between the adult uses and existing institutional uses that are family-centered such as churches, schools, day care and parks. The prohibition in or near the "OT-O" District and "CBD" district would protect the family-oriented attractions and public investments in those districts.
2. **The suitability of the subject property for the uses to which it has been restricted:** The current Unified Zoning Code allows adult uses to be located in close proximity to uses viewed as incompatible to adult uses, such as churches, schools, day care, parks and residences.
3. **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant:** This factor is generally discussed in terms of individual applications for zone changes rather than zoning code amendments, but the weighing of the factor is appropriate for measuring the validity of the proposed amendments. While some existing businesses that would become nonconformities might face some hardship in relocating their businesses to conforming sites, the general public would benefit from removing these businesses from the zoning districts in which families live and which are frequented daily or for special purpose occasions, such as for schools, parks, cultural facilities. Also, the presence of adult businesses is seen as decreasing the value of surrounding properties. This effect would be minimized by placement of adult businesses in zoning districts with fewer residential and public institutional uses that tend to be more negatively impacted in value by proximity to adult businesses. The adoption of the amendments would result in the gradual elimination in a reasonable manner of sexually oriented businesses that constitute nonconforming uses.
4. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The amendments should exert a positive rather than a negative effect on the surrounding uses in the "GO" General Office, "NR" Neighborhood Retail, "LC" Limited Commercial, and "OW" Office Warehouse, and "CBD" Central Business District zoning districts.
5. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The proposed amendments support the following Goals/Objectives/Strategies:
II Land Use Residential/Objective A: Encourage residential redevelopment...that maximizes the public investment in existing and planned facilities and services/Strategy A1. Use...zoning as a tool to promote mixed-use development, higher density residential environments and appropriate buffering. AND A6. Encourage the concentration of multi-family residential and mixed-use commercial development to activity centers within the central Wichita area...locations can be priority areas for financial incentives, beautification and amenity initiatives,...based on opportunities for new residential/commercial development. **Adult businesses would be removed from the "CBD" and "OT-O", which are the districts with maximum potential for mixed use and for residential redevelopment. This would encourage the flourishing of residential development in these areas, as well as encouraging mixed commercial and residential use. The separation requirements of the amendment support the strategy of using a more appropriate buffering of 500 feet between adult businesses and residential districts and certain uses. Currently, the UZC does not require a buffer for adult uses in the City.**

The proposed amendments are similar to those already governing the operation of sexually oriented businesses in Sedgwick County. The amendments would result in a more uniform regulation of these activities between the City and the County.

Attachment 1
(Agenda Item #)

City of Wichita
District I and VI Advisory Board Meetings
September 12, 2005

TO: City Council Member
District Advisory Board Members

SUBJECT: Proposed Wichita-Sedgwick County Unified Zoning Code Amendments Relating to Sexually Oriented Businesses

INITIATED BY: City Manager's Office

AGENDA: New Business

Recommendations: Provide comment on proposed amendments, and receive and file staff report/presentation material.

Background: The regulation, permitting and licensing of adult entertainment establishments are currently governed by Chapter 3.05 of the City Code. Adult entertainment establishments (or sexually oriented businesses) are not currently defined or regulated through the Wichita-Sedgwick County Unified Zoning Code (UZC) within the City of Wichita. There are several types of sexually oriented businesses subject to licensure and regulation, currently described as "adult entertainment establishments" in the City's licensing codes.

At the City Council workshop meeting of February 1, 2005, concerns were raised about the societal evils of adult entertainment or sexually oriented businesses and their impact on the public health, safety and general welfare of the citizens of the City of Wichita. There are also concerns that the City Code sections relating to the licensure and regulation of such businesses are outdated and do not reflect significant developments in the applicable law. On February 8, 2005, the City Council passed a moratorium on the issuance of permits and licenses for new adult entertainment businesses in order for the Council and City staff to more fully and comprehensively address the negative secondary effects these establishments impose upon neighboring properties and on the community as a whole.

During the moratorium, a staff review team was directed to: (1) assess the current licensure and regulation of sexually oriented businesses; (2) research and analyze developing law; (3) identify alternative, available means and locations within the City by which the City may accommodate the constitutional, expressive uses in a manner that reduces the pernicious secondary effects of sexually oriented businesses; (4) actively pursue development of comprehensive ordinances and/or code amendments to regulate adult entertainment establishments; and (5) make recommendations to the City Council concerning any necessary and appropriate legislation and/or code amendments.

At the City Council Workshop on July 26, 2005, staff presented a conceptual overview of proposed amendments to both the Wichita-Sedgwick County Zoning Code (UZC) and the existing adult entertainment licensing ordinance in regard to sexually oriented businesses located in the City of Wichita.

At its regular meeting on August 2, 2005, the City Council extended the moratorium until November 15, 2005 to allow staff time to: (1) draft more specific UZC and licensing ordinance amendment language; (2) present the proposed UZC changes to District Advisory Boards for review and comment; and (3) present final proposed UZC amendments to the Metropolitan Area Planning Commission for review and public comment during one of their regular public meetings in October 2005.

Analysis: A conceptual overview of proposed UZC and licensing ordinance amendments regarding adult entertainment or sexually oriented businesses is attached for District Advisory Board review.

Financial Considerations: The licensing ordinance amendments will recommend some fee increases. However, this should not be considered a significant source of revenue, as the proposed fee increases only account for the cost of actual staff regulatory activities, and there are only a limited number of adult business establishments to which the fees would apply.

Legal Considerations: Ordinance amendments are being developed with guidance from the City's Law Department so that the City's substantial government interest in controlling the pernicious secondary effects of sexually oriented businesses is accomplished in a manner that allows adequate, alternate opportunities for expression protected under the U.S. Constitution.

Recommendation/Actions: It is recommended that the District Advisory Board provide feedback and input on the proposed changes, and receive and file the staff report.

Attachment 2
8/31/05

District Advisory Board Overview

Proposed Sexually Oriented Business Zoning and Licensing Code Amendments

PROPOSED WICHITA/SEDGWICK COUNTY UNIFIED ZONING CODE (UZC) AMENDMENTS

- Add a definition in the UZC for "Adult Entertainment Establishment" or "Sexually Oriented Business". One proposed definition is:

"Sexually Oriented Business or Adult Entertainment Establishment in the City of Wichita means an "Adult Entertainment Establishment" as defined in Chapter 3.05.020 of the Code of the City of Wichita."

The definitions for "adult entertainment establishment", outlined in Chapter 3.05.020 of the Code of the City of Wichita, are currently as follows:

- (a) "Adult entertainment establishment" means any commercial establishment that is an adult bookstore, adult motion picture theater, adult hotel, or adult motion picture arcade as defined herein.
- (b) "Adult bookstore" or "adult video store" means an establishment which as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:
 - (1) Books, magazines, periodicals or other printed matter or photographs, films, motion picture, video cassettes, or video reproductions, slides, or other visual representations which depict or describe "specified" sexual activities or "specified anatomical areas"; or

- (2) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities." A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as "adult bookstore" or "adult video store" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas" (as defined below).
- (c) "Adult motion picture theater" means an enclosed building designed for five or more patrons used for presenting any material distinguished or characterized by an emphasis on matters depicting, or relating to "specified sexual activities" or "specified anatomical areas" (as defined below) for observation of patrons therein. The term does not include an adult hotel as defined below.
 - (d) "Adult motion picture arcade" means any place at which slug or coin operated, electronically or mechanically controlled, still or motion picture machines, projector or other image producing devices are maintained to show images to five or fewer persons per machine at any time, and which presents material which is distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas" (as defined below) for observation by patrons therein. The term does not include an adult hotel as defined below.
 - (e) "Adult hotel" means a hotel or motel wherein a substantial or significant portion of the material presented over image-producing devices within individual rooms, that are occupied by guests, are distinguished or characterized by an emphasis on matter depicting or describing "specified sexual activities" or "specified anatomical areas" (as defined below).

In addition to the above, the City will probably add a new definition and/or reference within Chapter 3.05.020 for "adult cabarets" in order to differentiate "cabarets" (live entertainment such as bands, as outlined in another separate City ordinance) from "adult cabarets" that are of a sexually oriented nature.

- In the UZC, add the newly-defined "adult entertainment/sexually oriented business" use as a permitted use only in "GC" General Commercial, "LI" Limited Industrial and "GI" General Industrial zoning districts. Currently, such uses are viewed as retail, theater hotel and/or office uses also allowed per zoning in "GO" General Office (hotels), "NR" Neighborhood Retail (depending on floor area), "LC" Limited Commercial, "OW" Office Warehouse, and "CBD" Central Business District. These uses would be further subject to new UZC Supplementary Use Regulations to prescribe the following additional location and/or separation requirements:
 - At least 500' away from a church, public or parochial school, public park, day care center or residential zoning district;
 - At least 500' away from any other adult entertainment establishment/sexually oriented business.

The above distances would be measured from the nearest property line of the residential zoning district, church, public or parochial school, public park or other adult entertainment establishment/sexually oriented business.

- Revise the UZC "Use Regulations Schedule" chart in UZC Article III.D to reflect the above changes.
- Add UZC language to "amortize" any adult entertainment establishments/sexually oriented businesses in the City that become "nonconforming" due to newly adopted UZC standards/regulations. Such amortization would only allow such establishments to be legally "grand-fathered" for a period of about one to two years from the date on which the new UZC regulations are adopted. This would mean that any existing businesses that could not conform to the new zoning regulations would be required to move their operations to a new, fully complying location and/or to close the existing business at the non-conforming zoning location. City Council has recently suggested a 1-year amortization period.
- Prohibit "adult entertainment/sexually oriented businesses as a permitted use in the UZC "OT-O, Old Town Overlay District", and also prohibit such businesses within 500' of the "OT-O, Old Town Overlay District".

ADULT ENTERTAINMENT ESTABLISHMENTS AND ADULT HOTELS LICENCING (Code Chapter 3.05)

- Add a new definition for "Adult Cabaret" and/or expand the definition of "Adult Entertainment Establishment" to include adult cabarets (3.05.020).
- Make sure that the distance requirement language in this Chapter is the same as the new UZC language outlined above (or just reference the UZC zoning requirements and UZC Supplementary Use regulations).
- Remove language and references to certain non-conformities.

CABARETS, ETC. (Code Chapter 3.08.030)

- Add language to exclude "adult cabarets" or refer such to new provisions/definitions in Chapter 3.05.
Attachment 3

**District Advisory Boards Recommendations
September & October 2005**

Staff from the Office of Central Inspection, the Wichita-Sedgwick County Metropolitan Area Planning Department, and the Law Department presented a conceptual overview of proposed amendments for the United Zoning Code and licensing ordinance regarding adult entertainment or sexually oriented businesses for Board review.

DAB I: DAB members express concern that the new ordinance would create additional businesses, that the City would be advertising for prostitution type services, how often these businesses would be regulated, could the zoning be used in the 21st Street Industrial area, what is the timeframe for businesses to reply, what is the input from the local businesses, and if a clause could be added to include all malls. **Action:** Provided input and comments for the City Council consideration. **Date of Action:** 09/26/05.

DAB II: DAB members expressed concern that SOB's should be located further than 500 feet from selected sites, rights of business and property owners regarding lease agreements and compensation for business relocation, suggested extending the 1-year amortization process until leases are completed to term, questioned if these businesses could be outlawed all together, the effect this will have on hotels which have adult movie pay-per-view services and whether this includes message and escort services. Staff answered all questions to the Board's satisfaction. **Action:** Provided input and comment for City Council consideration. **Date of Action:** 10/3/05

DAB III: DAB members expressed concern about SOB's current zoning, if they are located in the county are they also affected, the Grandfather clause, 2 years amortizing is holding up business for 1-2 years, the owners expense may not be recoverable and can the clause be used for other businesses, if this change includes escort businesses, if a property is annexed will zoning requirements take effect, is it legal for them to carry drug paraphernalia and if SOB's can change the name of their business. All questions were answered to the DAB members' satisfactions. **Action:** Unanimous vote from DAB they do not want these type of SOB businesses in District III. **Date of Action:** **October 5, 2005**

DAB IV: DAB Members questioned which district would have the highest rate of zoning for these businesses, the advantages and disadvantages of dispersion versus concentration, consideration to major gateways into the community. One DAB member expressed his concern that these businesses needed to be given an appropriate amount of time and one year was not enough. All questions were answered to the DAB members' satisfactions. **Action:** Provided input and comment for City Council consideration. **Date of Action:** 10/5/2005.

DAB V: DAB Members expressed concerns for rights of business owners; 1-year for the amortization process – would like longer period; protection for investments in Old Town, Core Area, & Arena; city continuing to grow & prosper while also protecting the children; consideration of any license infractions when renewing; an Allowing a church or school to move within 500 feet should not require the business to move. **Action:** Provided comment. **Date of Action:** 10/3/2005

DAB VI: DAB Members inquired/commented/asked the following: How many businesses would be affected by this change and can they be ran out of their present area, the one-year amortization is too short, do not just consider Old Town for prohibiting these businesses but also in the central business district, from 21st to 29th and Arkansas Streets are adult stores permitted in this area, will there be restrictions on the signage for those businesses, don't like that those businesses would be grandfathered in, don't believe these establishments cause as much trouble as bars and think it's wrong the adult businesses would have to move after a (day care) moves in. All questions were answered to the DAB members' satisfactions. **Action:** provided feedback and input on the proposed changes, and received and filed the report. **Date of Action:** 9-12-2005

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JOHN SCHLEGEL, Planning Director Item 12 these are amendments proposed to the Unified Zoning Code dealing with sexually oriented business. I am going to briefly outline for you the changes that are being proposed. I have a little background on why these amendments are before you today. Back in February 2005, the Wichita City Council began to raise concerns about sexually oriented businesses. You may recall the sexually oriented business that opened in Old Town, and some of the concerns that were expressed by the City Council at that time. On February 8, 2005, the City Council adopted a moratorium on issuance of any new licenses for adult entertainment business, and they directed staff at that time to review the current Codes, and to return with a set of recommendations for how the City's licensing and Zoning Codes might be amended.

With that direction, a staff task force was assigned, by the City Manager, to look into what the possibilities were and what other jurisdictions were doing throughout the country. We went back to City Council in July 2005, at a City Council Workshop, with a set of recommendations for the City Council and introduced those to the City Council at that time. City Council directed staff to move forward with those recommendations in early August 2005. The City Council extended the moratorium until November 15, 2005, that is a moratorium on any new permits or licenses. They directed staff to put the staff recommendations into amendments to the Unified Zoning Code, and start presenting the proposed amendments regarding sexually oriented businesses to the District Advisory Boards (DABs). We have spent the last 6-8 weeks presenting these proposed amendments to the DABs. As part of your Agenda material today you have all the reports from the various DAB meetings regarding this item.

The proposed amendments are primarily to the Zoning Code. Previously these sexually oriented businesses were not defined in the Zoning Code. They were treated as retail uses, or entertainment uses, and were only regulated by the City's Licensing Code. However, many jurisdictions throughout the country do regulate sexually oriented businesses through the Zoning Code, and the courts have upheld a variety of different types of zoning regulations. The courts, in those rulings, have recognized sexually oriented businesses as a designated land use that can have a detrimental effect on surrounding properties and land uses. So as a result, to the Unified Zoning Code we would be adding the definitions, which are listed out in the Ordinance in your agenda material, which would establish sexually oriented businesses as a designated use under zoning.

Those sexually oriented businesses would then be allowed only in three zones, the "GC" General Commercial, "LI" Limited Industrial, and "GI" General Industrial, and in effect then, it will eliminate them in the "GO" General Office, "NR" Neighborhood Retail, "OW" Office Warehouse, and "CBD" Central Business District zones. We prepared a number of analyses of what effect that would have, as far as the areas within the City whereby imposing that requirement you would still be able to locate a sexually oriented business.

Another requirement that was asked of staff by the City Council to be considered was a separation requirement. It is currently required under the Licensing Code, but they asked then that it also be included as part of the Unified Zoning Code. What we proposed to the City Council was a 500 foot separation requirement between sexually oriented businesses from a church, school, public park, licensed day care center, the boundary of any residential district, the boundary of the OT-O district, and from any other sexually oriented business. We have, also as a part of this analysis that you see up on the map in front of you, we have excluded the areas where that separation requirement would kick in. That shows, in effect, all the "GC" General Commercial, "LI" Limited Industrial and "GI" General Industrial zoning, minus those portions of those zoning districts where the separation requirement for any of those uses would kick in. So, that is why you see some holes in some of those zoning districts, because there was a separation requirement.

In addition, this has proved to be a pretty controversial part of these amendments as we have talked to the various DABs. It would require that all of the sexually oriented businesses that become nonconforming under these proposed amendments to the Zoning Code cease to exist or relocate within one year. That requirement has proved to be the most controversial aspect of these proposed amendments.

Finally, there is a prohibition proposed for sexually oriented business within the "OT-O" Old Town Overlay District, and anywhere within 500 feet of that Overlay District.

DUNLAP Has there been a solution to this one-year problem? I have never been to one of these places, and don't intend to go, but I do lease property on a five to ten year basis. Where, if somebody has seven years left on their lease and we tell them they have to vacate in one year, what will we do about that?

SCHLEGEL What the attorneys say, is that if the contract is made invalid by a governmental action such as this, then the contract is invalid. So if you are in a seven-year lease and you are only in the second year of that, and, the use that you are making of that property under that lease becomes illegal on that particular property, then the property lease will be invalid.

HENTZEN John, you mentioned that some of this is included in the licensing of these places, and this can be and will be applied to the Zoning Code. Does that mean that both the areas have to be exactly the same wording? Could the wording be different?

SCHLEGEL Because of the proposed changes to the Zoning Code, there are some minor changes that have to be made to the Licensing Code in order to keep the language consistent.

HENTZEN Another question is, when you said "In and around" Old Town, what does that mean? I think you answered it by saying within 500 feet.

SCHLEGEL Yes, that is the "around" part, in the Overlay District as a defined area.

HENTZEN If Old Town grows and we keep adding to it, and somebody has established one beyond 500 feet on the day the apply, or whatever it is, do they have to get out?

SCHLEGEL Yes, if they become nonconforming under this. I think what you are asking is, if they expand the "OT-O" Old Town Overlay District, and now suddenly a business is nonconforming, then they have, under the proposed changes, they would have one year to go out of business or relocate somewhere else.

SHERMAN Is that the same with school and churches?

SCHLEGEL Yes.

SHERMAN So they are at risk wherever they go?

SCHLEGEL Correct.

HILLMAN So, if I build a church and a filling station next to a sexually oriented business and I establish a non-profit and put up a cross, then I can force them out next door?

WARNER Not if they are there first.

SCHLEGEL That is what is being proposed.

WARNER I thought I read that if they were there first and somebody moved in next to them they couldn't make them illegal.

JAY HINKEL, Assistant City Attorney Law Department John is correct that we initially discussed this as a proposal, that anytime one of these trigger entities of a church, a school, day care center, that sort of thing would move in, that would cause the existing business to be non-conforming. But as presented to you now, that is not the case. There would be a time certain upon the passage of the Zoning Code provision by which everything would be evaluated. And any business existing at that point would not be subject to being pushed into non-conformity by the subsequent moving in of one of these trigger entities.

HILLMAN What is the "time certain" part that you are talking about? Will they have five years to make up their mind? Is that an open ended or is there an absolute sequential event taking place? So if I chose to locate next door to one of these establishments, and I am second on the block, I could never affect it?

HINKEL The day that the Zoning Code provision takes effect, all of the existing businesses that are conforming or under the new provision would remain conforming, and would not become nonconforming by a later trigger entity moving within 500 feet.

HILLMAN Thank you.

MARNELL How many businesses will this immediately put out of business or impact?

HINKEL I believe it is 8 or 9 businesses.

ANDERSON Where would they be able to locate?

SCHLEGEL In any of the shaded areas on the map, these would be available.

ANDERSON What shaded areas?

MARNELL Which ones?

SHERMAN John, you said the purple not the black shaded area?

SCHLEGEL Anything that is colored on there would be available for a sexually oriented businesses following the adoption of these amendments. Now the darkest area is "GI" General Industrial, which is one of the districts, the purple color is "LI" Light Industrial, and that pinkish color is "GC" General Commercial.

SHERMAN The area up to the north, what is that?

SCHLEGEL I would call that the Central Industrial Corridor between Broadway and I-135, and would run from Murdock up to 29th Street.

SHERMAN Isn't that part of the 21st Street Revitalization Plan?

SCHLEGEL Correct.

SHERMAN When this is in place, you will be out of conformance right away because you will be 200 feet instead of 500 feet?

SCHLEGEL 500 feet would be the separation requirement.

SHERMAN If they are in conformance with everything else, as long as they stay that way, they are going to be grandfathered in, or if they are not, they are automatically out of conformance and have to move?

SCHLEGEL If they are within 500 feet of a school, park, church, day care center, or residential district, they become non-conforming.

SHERMAN Automatically?

SCHLEGEL Correct.

SHERMAN So they will have to do something within a year?

SCHLEGEL Correct.

SHERMAN All of those 8 or 9 businesses that you stated earlier?

SCHLEGEL Correct.

SHERMAN Ok, after they relocate, if somebody moves in afterwards, they will not be able to put them at risk if they move in closer than 500 feet?

SCHLEGEL Correct.

SHERMAN So as a church, school, or day care, it is my choice to move in closer, but I cannot supersede once this is in place? I am very concerned about that black shaded area on the map. Isn't that part of the 21st Street Revitalization Plan?

SCHLEGEL Yes, portions of that were covered by the 21st Street Revitalization Plan.

DUNLAP And portions covered by Mid-Town.

SCHLEGEL Correct.

ALDRICH You are saying that the businesses will be allowed to go in there?

WARNER Yes, because of the zoning.

SHERMAN That is not good.

SCHLEGEL It is a matter of choices. The City is required to allow these businesses somewhere within city limits. So you have to make some choices here, where to allow them. So far, in the analysis that we have done, restricting it to these three zoning districts seems to be, of what are perhaps all bad choices, these are the least bad. Now, there are two strategies that you can pursue under zoning. You can either concentrate them all in one place, and have like a combat zone, or you can disburse them by doing more or less what we are doing here, allowing them in certain zoning districts and then having separation requirements. There were very few jurisdictions in the country that ended up doing the concentration strategies because it is so hard to find a single place in your jurisdiction to put all of these. We have about seventeen of these businesses in the city limits and that is an indication of what the market is here for this type of business.

ALDRICH That ought to fit real well for the International Market Place shouldn't it?

SCHLEGEL Nobody wants them in their neighborhood, is what it comes down to.

SHERMAN John, what action do we need to do today?

SCHLEGEL Review and recommend on these proposed amendments.

SHERMAN We don't, or we do, affect those shaded areas?

SCHLEGEL You can recommend anything you want as a Board. This will go forward to both governing bodies. My job today was to present this to you today and your job is to review and make a recommendation to the City Council.

ALDRICH Basically, what you are saying is that if we made a motion to accept, we can exclude the black shaded area?

SCHLEGEL Yes, you can recommend anything you want as a Board.

WARNER What is the zoning of the black shaded area?

SCHLEGEL That is all "GI" General Industrial.

SHERMAN The purple is?

SCHLEGEL That is "LI" Limited Industrial.

SHERMAN Tell me where that is located in the city, what streets?

SCHLEGEL North of K-96.

MARNELL John, since the City's objective is to really run these places out of business, is there any reason why you didn't or couldn't put a restriction and say that they can't be within 500 feet of a designated major arterial? We are trying to kill them, and they are legitimate businesses whether some of us like them or not. Why not be up front about what we are doing? The City is going to do this anyway whether we recommend the amendments or not.

ANDERSON I think we need to take the recommended action that we have been presented with, because I have a hunch that this whole proposal is going to go to court, but I feel this Board needs to approve what has been recommended by the Planning Director.

SCHLEGEL Before you make a motion, this is a public hearing. So I would recommend that you open the public hearing.

WARNER Is there anyone here to speak on this item?

DARLENE NUSE, 2021 Jewell, Wichita, KS 67213 I am here in behalf of Operation SouthWind, and we would like to thank you for the opportunity to contribute input to the issue of the adult entertainment, and sexually oriented businesses operating within the city limits. Obviously this is an issue of enormous proportions with far reaching effects, especially secondary effects that require detailed study. We have read through this report and I understand that there are some technical corrections on the report from today. We would like you to clearly define a sexually oriented business, and what defines them, 20%, 30%, at what point do some of these companies become sexually oriented businesses? We have a Spencer's in the Mall; some of those items in there I would consider as something you buy in a sexually oriented business but those things are being sold in the Mall. Our children are going in and they see those items. When you put them in a "GC" General Commercial zoning, our concern on that is, isn't that leaving to big of a hole for them to be highly visible? We want clarification on that measurement.

TAPE CHANGE

Earlier when I spoke on Agenda Item 9. Bethany Lutheran Church and School is right behind Circle Cinema, and some of the items that we find behind that fence are appalling. I have pictures if you would like to see them. The fence between our ground and Circle Cinema, the Office of Central Inspection is welcome to come out there at anytime to see the tires and the debris. Our school children are back there and they are very close, and they look out the window from school and they see Circle Cinema right there, and it is hard to answer their questions. Also, the school-crossing zone for the public schools right there on Seneca is right down the street from Circle Cinema. There are four churches in that area. And, as you heard earlier, a nightclub is wanting to move in there. The police and neighborhood are working together to clean this area up. These businesses have negative affects. We want to make sure that the verbiage that you have in the proposed amendments will help and be adequate to resolve some of the issues. We will be putting something in writing for the City Council. The Wichita Eagle on Sunday published a map of where these businesses are located.

DAVID MEADOWS, 908 E. 71st Street South, Haysville, KS, 67060 I pastor a church at 5828 South Broadway, which is right next to the Adult Super Store at 5858 South Broadway. The 500 feet from a church, etc., really needs to be enforced. My personal opinion, I would like to see the combat zone. But we have to take what we can do. I have brought with me today a sack of trash that we have picked up within the last two weeks off of our church property. It is not the girly pictures or topless girls, it is human gentiles, and people doing sex acts. And this trash never seems to stay in the property where the people purchase it. We do not feel that if a person has made a decision that they want porn, they have made that decision, but if a person makes a decision that they want to go to church and try to find God's help to improve their life, they should not have porn in their face. The people who mow etc., don't like seeing this porn.

The crime impact these businesses have on a neighborhood, the location where we are is "LC" Light Commercial, but we are bounded on both sides of Broadway by residential areas. We have had three major thefts, lawnmowers, cars, trailers, sound equipment, etc., stolen. The school districts have even had to change the locations to pick up kids because kids are being harassed by people coming out of the store. If these people want to have this kind of business, they need to go somewhere where they can enjoy what they enjoy and the rest of the community can be free from it. On December 31, 2000 we had a shoot out, and our young people were at the church for a safe New Year's activity. On the parking lot of the sex business, two people got into some kind of confrontation and shots were fired. And this has happened twice.

HENTZEN John, personally I think this needs to be in the courts as fast as possible, and if that is what we should do is approve this document, then I will support that. Do you think this is going to court?

SCHLEGEL Yes.

ALDRICH I have been working diligently with a lot of people in the community to revitalize the 21st Street Business District and that area, and having said that, I don't think it is appropriate to have adult entertainment centers in that area.

MOTION: To approve the proposal as written with one exception, and that is to eliminate to "GI" General Industrial zone as a location.

ALDRICH moved, **SHERMAN** seconded the motion.

MARNELL I have a question for the City Law Department. Will this in anyway affect the delivery of similar products via cable TV or satellite since this is going after video stores? Could this be applied to these businesses?

HINKEL I don't understand the question.

MARNELL Could people who sell satellite or cable TV, would they be subject to this, and if their zoning is not correct then they are in trouble?

HINKEL Satellite like?

MARNELL They all carry profanity; that would fit this amendment.

HINKEL No, the City is not involved in censorship here. This is a land use/planning issue.

MARNELL I wasn't talking about censorship. I was asking whether those businesses would be subject to this Ordinance. Could they be considered, because I think someone asked what percentage of their business, and would this drag, as an unintended consequences maybe on you part, drag somebody like Cox Communication into this thing.

HINKEL It is my opinion that pure communication, electronic or other type of data distribution that would occur at a Cox or satellite facility, would not be affected any way by this. The regulation deals with the sale of products or provision of services that are onsite, and, therefore bring with them the potential of negative secondary effects to that land use and the surrounding areas. Places such as cable providers or satellite offer nothing onsite. Their business is to distribute it to other locations in the City and the County, and I don't see how it would apply at all.

SUBSTITUTE MOTION: To approve subject to staff recommendations.

ANDERSON moved **MARNELL** seconded the substitute motion, and it carried (7-3). **ALDRICH, HILLMAN, SHERMAN**, opposed.

13. **Case No.: DR2005-23** – Request Zone change from “LI” Limited Industrial to “CBD” Central Business District

Generally located Between St. Francis Avenue, William Street, BNSF railroad right-of-way, one-half block east of Commerce Street and Kellogg

AGENDA ITEM:

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

DATE: October 20, 2005
TO: Metropolitan Area Planning Commission
FROM: Donna Goltry, Principal Planner, Current Plans
SUBJECT: **DR2005-00023** Zone change from “LI” Limited Industrial to “CBD” Central Business District for an area generally located between St. Francis Ave., William St., BNSF railroad right-of-way one-half block east of Commerce St. and Kellogg. (District I)

Background: On September 13, 2005, Wichita City Council voted (7-0) to initiate a rezoning from “LI” Limited Industrial to “CBD” Central Business District for an area described as:

Odd lots 29-75 on Fourth Street, now St Francis Ave., in N.A. English Addition; Even lots 38-76 on Fifth St, now Santa Fe Ave, in N.A. English Addition; Odd lots 77-107 on Fourth Street, now St Francis Ave, in N.A. English 3rd Addition; Even lots 78-108 on Fifth St, now Santa Fe Ave., in N.A. English Addition; Lots 1-29 on Fourth Street now St Francis Ave. in Fletchers Addition; Lots 31-39 on Fifth St, now Santa Fe Ave., in Fletchers Addition; Lots 1-15 on Fifth St, now Santa Fe Ave., in Fletchers 2nd Addition;

Together with a unplatted tract described as

BEG SW COR LOT 39 FLETCHERS ADD S 50 FT E 140 FT N 50 FT W TO BEG EXC ST. SW1/4 SEC 21-27-1E

Together with a unplatted tract described as

BEG 50 FT S SW COR LOT 39 FLETCHERS ADD S 100 FT E 100 FT NE ALG ROW TO

PT E OF BEG W TO BEG EXC S 49.9 FT TO CITY CCA-33119

Together with vacated English St from the east line of Fourth Street, now St Francis Ave to the west line of Fifth St, now Santa Fe Ave., in N.A. English Addition:

Together with vacated Lewis St from the east line of Fourth Street, now St Francis Ave to the west line of Fifth St, now Santa Fe Ave., in N.A. English 3rd Addition:

Generally described as being located between St. Francis Ave., William St., BNSF railroad right-of-way one-half block east of Commerce St. and Kellogg.

The City Council initiated the rezoning action pursuant to the Unified Zoning Code provision that the “Governing Body may initiate a zone change request with or without an application from the property owners” (Unified Zoning Code Art. V, Sec. V-A.1). All notice requirements except written (mailed) notice to individual property owners apply for general revisions of the Unified Zoning Map processed under this provision.

Analysis: The area proposed for rezoning to “CBD” is a three-block stretch flanking both sides of Commerce Street south of William to Kellogg. The BNSF railroad forms the eastern edge and St. Francis Street forms the western edge. The area is spontaneously undergoing a transition from industrial/manufacturing uses to a broader mix of uses with residential, commercial, and institutional uses being added. In the past five years, several retail shops have opened such as Dock 410 and Fiber Studio. Fiber Studio is unique because the owners of this site requested rezoning of the property to “CBD” in 2000 in order to locate the studio and gallery for artists on the main floor and a residence on the second floor. Just recently several other owners on the same block of Commerce also were approved for “CBD” zoning in order to combine studios with loft apartments. A larger loft conversion is

underway on a "CBD" zoned tract across St. Francis Street (201 S. St. Francis, known as the Lofts at St. Francis) from the proposed rezoning area.

The area is located within the Arena Neighborhood Redevelopment Plan Area. If the site for the arena is located in close proximity, it could have a major impact on the redevelopment of these blocks. If an arena site is selected farther away, the most likely impact will be intensified demand for commercial use mixed with residential use, added to the existing traditional mix of industrial, contractors sales and service (heating, electrical, etc) and auto repair uses.

The most significant disadvantage to "LI" zoning is its prohibition of residential use. Another difference is "LI" allows some uses, by right or by Conditional Use, that are incompatible with the urban core, including: asphalt plant (general), gas and fuel storage, freight terminal, landfill, transfer station, and wrecking/salvage yard. "CBD" eliminates kennels, tattoo parlors, and day reporting centers, but adds bed and breakfast inn, and group homes.

"CBD" also (1) removes the off-site parking requirements to allow flexibility in developing shared parking facilities to serve multiple parking needs, (2) eliminates building setbacks to allow zero-lot setbacks in character with traditional downtown development and that is compatible with the trends in loft/apartment uses, and (3) eliminates height restrictions to allow higher intensity use that reinforces the viability and liveliness of the downtown area.

Recommended Action: Based on information available prior to the public hearing, staff recommends approval of "CBD" zoning for the proposed area.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: A spontaneous transition to a mix of commercial, residential and institutional uses is occurring in the area. Many traditional industrial, construction sales and service and auto-repair types of uses remain. Also, large tracts are devoted to surface parking lots to support other more intensive urban-type development in the vicinity. All the property to the west of St. Francis, the western boundary of the proposed rezoning area, is zoned "CBD" already.
2. The suitability of the subject property for the uses to which it has been restricted: The desire for reusing a portion of the area for residential use is prohibited by the current zoning. Several property owners have sought to convert their property to "CBD" zoning to circumvent this prohibition. If the whole area were rezoned, probably more uses would seek to mix residential/commercial with industrial type uses.
3. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The relative gain is to both the property owners who seek to redevelop their property and to the city from redevelopment of a part of the urban core.
4. Extent to which removal of the restrictions will detrimentally affect nearby property: Certain uses would no longer be permitted and would become nonconforming.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The proposed amendments support the following Goals/Objectives/Strategies: II Land Use Residential/Objective A: Encourage residential redevelopment...that maximizes the public investment in existing and planned facilities and services/Strategy A1. Use...zoning as tool to promote mixed-use development, higher density residential environments and appropriate buffering. AND A6. Encourage the concentration of multi-family residential and mixed-use commercial development to activity centers within the central Wichita area...locations can be priority areas for financial incentives, beautification and amenity initiatives,...based on opportunities for new residential/commercial development. The rezoning enables this to occur and the arena redevelopment plan may spur additional activity.
6. Impact of the proposed development on community facilities: Since "CBD" does not require on-site parking, there could be pressure to develop shared surface parking lots or parking structures.

DUNLAP You are talking about both sides of St. Francis?

GOLTRY Yes.

DUNLAP There are some uses just north of Waterman on the west side of St. Francis that most certainly appear to be industrial.

GOLTRY They would still be permitted. The only things that really come out are freight terminals (and the other uses listed in the staff report).

DUNLAP Parking is going to basically endorse what is happening today anyway?

GOLTRY Exactly.

DUNLAP Parking on the east side of St. Francis is for the businesses on the west side?

GOLTRY Yes, unless we should have the desirable situation where we would have pressure to redevelop this with more desirable uses and perhaps provide a parking structure.

HILLMAN This would allow used furniture, antique shops, things like that?

GOLTRY Yes, retail is more appropriate in "CBD" than "LI".

HENTZEN I realize the City can request and initiate rezoning even though there is no application, has this proposal that you are putting before us caused any intense interest by the landowners in that area?

GOLTRY No, not in this area it has not.

MOTION: To approve subject to staff recommendations.

DUNLAP moved, **ALDRICH** seconded, the motion and it carried (9-0).

14. **Case No.: DR2005-24** – Request Zone change from “LI” Limited Industrial and “GC” General Commercial to “CBD” Central Business District

Generally located Between 2nd Street North, approximately 200 feet south of Douglas Avenue between I-135 and Hydraulic Avenue, Hydraulic Avenue, Waterman Street, BNSF railroad right-of-way, Douglas Avenue and Washington Avenue

Briefing on Sedgwick County Arena site selection and on Arena Neighborhood Redevelopment Plan—John Schlegel.

AGENDA ITEM:

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

DATE: October 20, 2005
TO: Metropolitan Area Planning Commission
FROM: Donna Goltry, Principal Planner, Current Plans
SUBJECT: **DR2005-00024** Zone change from “LI” Limited Industrial and “GC” General Commercial to “CBD” Central Business District for area generally located **between 2nd Street North, I-135, approx. 200 feet south of Douglas Ave. between I-135 and Hydraulic Ave., Hydraulic Ave., Waterman St., BNSF railroad right-of-way, Douglas Ave. and Washington Ave. (District I)**

Background: On September 13, 2005, Wichita City Council voted (7-0) to initiate a rezoning from “LI” Limited Industrial and “GC” General Commercial to “CBD” Central Business District for an area described as:

Beginning at the SW/corner of the NE/4 of sec 21 Twp27 R1E; thence North along the west line of said qtr sec on a bearing of N 1degrees 19'0.12" W a distance of 1300.00'; to the center line of 2nd St N; thence along the said center line, N 88degrees 49'22.77" E a distance of 2665.49'; thence N 83degrees 17'31.59" E a distance of 215.10'; thence N 89degrees 16'35.14" E a distance of 438.38'; to the west right-of-way line of Interstate Hwy I-135; thence southeasterly on the said right-of-way to the Southeast corner of the Kansas Food Bank Warehouse Addition; thence S 89degrees 40'32" W along the south line of said addition; thence N 21degrees 55'18.32" W a distance of 182.99' to the SE corner of Lot 47, Black's Addition; thence S 88degrees 57'50.99" W a distance of 300.36' to the Southwest corner of Lot 25, Black's Addition; thence S 53degrees 9'51.39" W a distance of 87.18' to the Southeast corner of Lot 4 Buchanan's Addition to Wichita; thence S 88degrees 45'8.34" W a distance of 300.81', to the Southwest corner of Res A, Buchanan's Addition to Wichita; thence N 75degrees 11'23.61" W a distance of 73.63' to the NE corner of Lot 1, on Hydraulic Street, Hyde's Addition; thence S 0degrees 56' 42.09" E a distance of 400.77' to the SE corner of Lot 31, on Hydraulic Street, Hyde's Addition; thence S 1degrees 39'11.71" E a distance of 75.56'; thence S 0degrees 51' 42.23" E a distance of 585.10' to the center line of Waterman Street; thence S 88degrees 23' 16.95" W a distance of 2582.14' along the center line of Waterman Street; thence continuing west along Waterman Street, S 86degrees 51' 15.79" W a distance of 359.91'; thence S 87degrees 12' 14.90" W a distance of 386.96'; thence S 85degrees 57' 54.87" W a distance of 299.51'; thence N 15degrees 17'53.79" W a distance of 38.77' to the SW corner of Lot 2, Union Station Addition, said point being the intersection of the north right-of-way line of Waterman Street and the east line of the railroad right-of-way; thence north along said railroad right-of-way to the intersection of the south right-of-way line of Douglas Ave.; thence N 0degrees 8' 49.43" W a distance of 53.25' to the center line of Douglas Ave.; thence N 88 degrees 41' 21.70" E along said center line a distance of 1052.05' to the west line of the NE/4 of sec 21 Twp27 R1E; thence N 2degrees 35' 57.33" W along the west line of said qtr sec to the point of beginning.

Generally described as being located **along a line beginning at the intersection of Washington Ave. and 2nd Street North, thence east along 2nd Street North to I-135, thence south to the southern boundary of the lots fronting onto Douglas between I-135 and Hydraulic Ave., thence south along Hydraulic Ave. to Waterman St., thence west along Waterman to the BNSF railroad right-of-way, thence north to Douglas Ave., thence east to Washington Ave., and thence north to the point of beginning.**

The City Council initiated the rezoning action pursuant to the Unified Zoning Code provision that the “Governing Body may initiate a zone change request with or without an application from the property owners” (Unified Zoning Code Art. V, Sec. V-A.1). All notice

requirements except written (mailed) notice to individual property owners apply for general revisions of the Unified Zoning Map processed under this provision.

Analysis: The area proposed for rezoning to "CBD" is roughly fifty city blocks in size. It encompasses a wide variety of uses. These include manufacturing firms such as the Wichita Eagle, Big Dog Motorcycles, McCormick Armstrong (commercial printing) plus many smaller firms. Many construction sales and service uses dot the area, including at least two lumberyards and a number of contractor office/warehouse sites. Another large cluster of uses include auto sales lots, auto repair, and auto parts. The variety of commercial/retail uses spans from a large new furniture store (Abode) that recently constructed a new zero-lot setback facility along Douglas, to small independent merchants along Douglas storefronts that help maintain the area as a walkable urban downtown shopping area. Several office and institutional uses have invested in the area, including the new Red Cross headquarters that redeveloped an old car dealership facility, Wichita Children's Theatre, United Methodist Urban Ministries; Kansas Foodbank, Inc. has plans to construct a new facility southwest of Douglas and I-135. Perhaps the most surprising use is residential. Around 20 percent of the existing land still is occupied by residential use, although the current "LI" zoning makes this nonconforming.

The most significant disadvantage to "LI" zoning is its prohibition of residential use. Another difference is "LI" allows some uses, by right or by Conditional Use, that are incompatible with the urban core, including: asphalt plant (general), gas and fuel storage, freight terminal, landfill, transfer station, and wrecking/salvage yard. None of these uses were observed in the rezoning area. The northwest corner of Waterman and Washington does have a large warehouse that appears to be vacant and for lease, but it appears to fall in the "warehouse" classification that would be allowed in "CBD". "CBD" eliminates kennels, tattoo parlors, and day reporting centers, but adds bed and breakfast inn, and group homes. Some tattoo parlors and a doggy day care are located within the area.

"CBD" also (1) removes the off-site parking requirements to allow flexibility in developing shared parking facilities to serve multiple parking needs, (2) eliminates building setbacks to allow zero-lot setbacks in character with traditional downtown development and that is compatible with the trends in loft/apartment uses, and (3) eliminates height restrictions to allow higher intensity use that reinforces the viability and liveliness of the downtown area.

The rezoning tract has perhaps languished in terms of desirability over the past 30 years as suburbanization of industrial, auto and commercial uses took its toll on the properties. In the recent past, the trend has changed.

The area to the northwest is Old Town, which has breathed new life and activity into the area. Many restaurants, sports bars, the Old Town Theater, museums, and a burst of residential redevelopment have occurred. (The property is zoned "LI" Limited Industrial but the area is zoned with an overlay, "OT-O" that specifically permits residential use). At least five existing warehouses or commercial buildings have been converted to residential lofts or mixed residential/commercial use and more are under construction and/or in the planning stages. One hotel has been redeveloped from an old warehouse and a second is in the planning stages. Also, the area due west along the south side of Douglas is a park and then the Eaton Place, the largest single residential conversion in the urban core.

These trends have spilled over to the area under consideration for "CBD" zoning and we see renewed interest in redevelopment. In addition to the new/redevelopment uses discussed previously, several owners have sought to expand the "OT-O" district in order to redevelop their properties. In one case, it was to permit the Case building to be converted to residential lofts; in another is was to participate in the Old Town Parking District since on-site parking was not available.

Recommended Action: The "CBD" zoning district offers the largest range of uses to accommodate the continued use of the area for industrial/commercial type uses, but to encourage urban mixed use redevelopment with an increasing component of retail catering to the public and residential use. Based on these factors and the information available prior to the public hearing, staff recommends approval of "CBD" zoning for the proposed area.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area has a very diverse mix of residential, commercial including retail and service business, offices, institutional uses, auto-related commercial, construction sales/service types of business, and manufacturing. The zoning is "LI" except for a few isolated "GC" tracts. The surrounding area to the east is Old Town and the downtown area. To the north and south of the proposed rezoning tract, the land use patterns are similar to those in the area being considered for rezoning except that they are less proximate to Douglas so lack the walkable urban shopping district.
2. The suitability of the subject property for the uses to which it has been restricted: The desire for reusing a portion of the area for residential use is prohibited by the current zoning. Several property owners have sought to convert their property to "OT-O" or "GC" zoning to circumvent this prohibition. If the whole area were rezoned, probably more uses would seek to mix residential/commercial use with industrial type uses.
3. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The relative gain is to both the property owners who seek to redevelop their property and to the city from redevelopment of a part of the urban core. Perhaps a hand-full of businesses would become nonconforming but a far greater number of residential uses would become conforming uses again.
4. Extent to which removal of the restrictions will detrimentally affect nearby property: Certain uses would no longer be permitted and would become nonconforming.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The proposed amendments support the following Goals/Objectives/Strategies: **II Land Use Residential/Objective A: Encourage residential redevelopment...that maximizes the public investment in existing and planned facilities and**

services/Strategy A1. Use...zoning as tool to promote mixed-use development, higher density residential environments and appropriate buffering. AND A6. Encourage the concentration of multi-family residential and mixed-use commercial development to activity centers within the central Wichita area...locations can be priority areas for financial incentives, beautification and amenity initiatives,...based on opportunities for new residential/commercial development. The rezoning enables this to occur.

6. Impact of the proposed development on community facilities: Since "CBD" does not require on-site parking, there could be pressure to develop shared surface parking lots or parking structures.

MARNELL Was there an opt-out offered for people in this area?

GOLTRY No opt-out was offered.

MARNELL So this is a downzoning?

GOLTRY It is officially a downzoning, and there are a couple of tattoo parlors that are located along Douglas that would become non-conforming uses.

HENTZEN Do you consider this rezoning more restrictive than what they now have?

GOLTRY In the hierarchy of the Zoning Code, "CBD" falls above GC, so it is considered a less restrictive district than "GC" but it is considered more restrictive than "LI" Limited Industrial. What you see when you look at the uses that are allowed within each of these Code categories what you see is that you take away a lot of the really heavy extensive industrial uses.

HENTZEN It just seems like such a large area that somebody is not going to agree with what you just said.

GOLTRY The tattoo parlors are the only ones that we have heard from.

HILLMAN In our 2030 plan are we looking to expand the off load of trucking and businesses that might come in by rail? I know this tracks right along Santa Fe on one side have maybe you not pushed the line maybe to close to the tracks that we might have to go back and change that?

SCHLEGEL That is where Cox's building is now the old train station.

HILLMAN I am just wondering if that line is a little close because in 5-10 years and all the bridges come in and we put in new tracks come in are we going to have the right kind of the spacing that we will need to do?

SCHLEGEL Given the conversion of the train station to office use and the other buildings that were ancillary to the train station to office use I guess that we would anticipate for the downtown area and adjacent to Old Town that those buildings, even those Cox is moving out of those buildings, will continue to be used in some similar manner and not be turned into freight terminals.

MOTION: To approve subject to staff recommendations.

DUNLAP moved **ANDERSON** seconded the motion and it carried (8-0).

DUNLAP I would like to comment on the boundary. Our special taxing district encompass a little bit more than what we just did, we couldn't included today here because, if we did we would have had to re-advertise for public comment. I would like staff to extend this area over to Washington and down to Kellogg and basically complete the corner and then it would line up the corners.

SCHLEGEL You are talking about over to Washington, down to Kellogg, and along the tracks?

DUNLAP Correct.

SCHLEGEL Was that a motion?

DUNLAP I am asking staff be directed to do that, so the development organization doesn't have to make application and pay the fee.

MOTION: To direct staff to extend the "CBD" zoning over to Washington, down to Kellogg, and along the tracks?

DUNLAP moved, **DOWNING** seconded and the motion carried (8-0).

15. Other matters/adjournment.

SCHLEGEL The County representatives are going to come back to you with a great deal more information about the arena site selection. They are going through a very detailed analysis of the four sites. I wanted to get you briefed today with what has happened so far. The BOCC wants to make a decision on a site for the arena by mid-November. By the end of this month, there will be a preliminary footprint for an arena on each of those four sites, to be shown at a public meeting that will be held at the Bank of American on October 27th from 4 p.m.-7 p.m.

I will take you quickly on an update of the Arena Neighborhood Redevelopment Plan. This is a separate project from the arena site selection. It is being carried forth by the City. The boundaries for the study area are the properties fronting along Douglas, the northern edge of those boundaries, then over to the Central Rail Corridor, down to Kellogg and then up along Main Street. The linkage between the arena site and all of these other activity centers will be critical components of the plan. We hired a consulting team headed up by Gould Evans out of Kansas City. Also there is another company, the ERA, which will advise the City of how much of different categories of development can be expected to occur around the area of the arena. We hope to get a redevelopment plan that will deal with the environmental remediation issues for that area. This is part of the Gilbert Mosley area, plus there are some other environmental issues that need to be addressed. Plus, there are other public improvements that will be necessary, in addition to what is needed for the arena, to promote redevelopment around the arena. We have put together a steering committee composed of stakeholders from that area, primarily business owners from that area and the area around the plan area. We have gone through some work with them, and they tell us that in picking the site for the arena, they tell us that there are some key considerations. We have passed this on to the County and the Arena design people.

The arena design, the exterior, will be the next step. The Arena Neighborhood Redevelopment Plan steering committee will be brought into and be helping to recommend what the exterior design of the arena will look like. The County has done a Phase I Environmental assessment for the area, and that review included a survey of historic structures and districts as well as any structures that might have potential historical significance.

The Metropolitan Area Planning Department informally adjourned at 5:19 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2005.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)